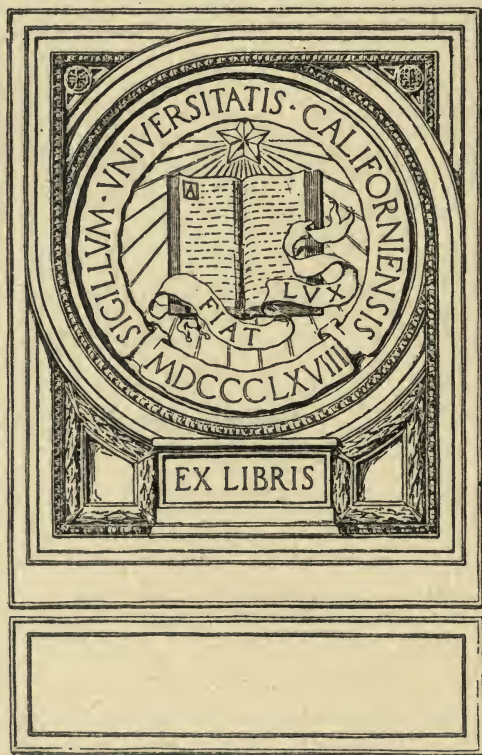




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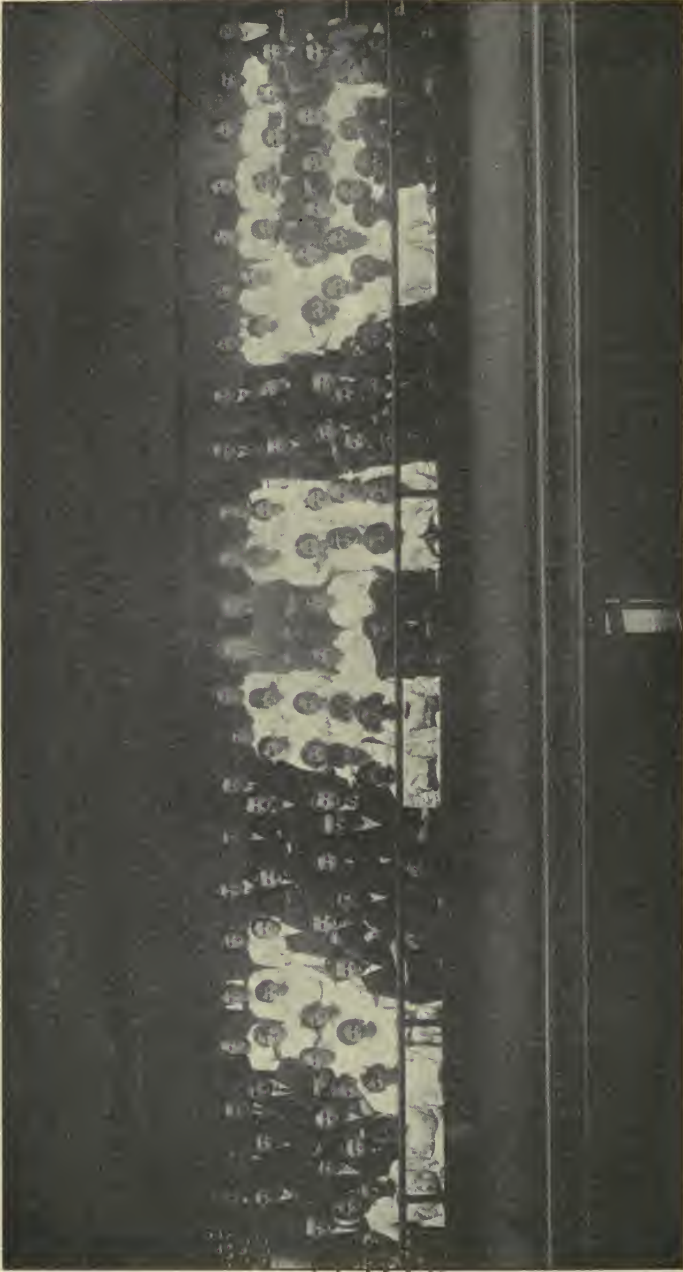








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### Honoring Commissioner Finley

President Finley made the principal address at the dedication of the Depew High School. The girls dressed in white are arranged to represent the initials of Doctor Finley's name.



The University of the State of New York  
The State Department of Education

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# ELEMENTARY EDUCATION

REPORT FOR THE SCHOOL YEAR ENDING JULY 31, 1915

BY

THOMAS E. FINEGAN

*Deputy Commissioner of Education and Assistant  
Commissioner for Elementary Education*

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*Volume 2 of the twelfth annual report of the State Department of Education*

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ALBANY  
THE UNIVERSITY OF THE STATE OF NEW YORK  
1918

THE UNIVERSITY OF THE STATE OF NEW YORK

Regents of the University  
With years when terms expire  
(Revised to April 1, 1918)

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- 1926 PLINY T. SEXTON LL.B. LL.D. *Chancellor* - Palmyra
- 1927 ALBERT VANDER VEER M.D. M.A. Ph.D. LL.D.  
*Vice Chancellor* Albany
- 1922 CHESTER S. LORD M.A. LL.D. - - - - - Brooklyn
- 1930 WILLIAM NOTTINGHAM M.A. Ph.D. LL.D. - - - - - Syracuse
- 1921 FRANCIS M. CARPENTER - - - - - Mount Kisco
- 1923 ABRAM I. ELKUS LL.B. D.C.L. - - - - - New York
- 1924 ADELBERT MOOT LL.D. - - - - - Buffalo
- 1925 CHARLES B. ALEXANDER M.A. LL.B. LL.D.  
Litt.D. - - - - - Tuxedo
- 1919 JOHN MOORE - - - - - Elmira
- 1928 WALTER GUEST KELLOGG B.A. LL.D. - - - - - Ogdensburg
- 1920 JAMES BYRNE B.A. LL.B. LL.D. - - - - - New York
- 1929 HERBERT L. BRIDGMAN M.A. - - - - - Brooklyn

President of the University and Commissioner of Education

JOHN H. FINLEY M.A. LL.D. L.H.D.

Deputy Commissioner and Assistant Commissioner for Elementary Education

THOMAS E. FINEGAN M.A. Pd.D. LL.D.

Assistant Commissioner and Director of Professional Education

AUGUSTUS S. DOWNING M.A. L.H.D. LL.D.

Assistant Commissioner for Secondary Education

CHARLES F. WHEELOCK B.S. LL.D.

Director of State Library

JAMES I. WYER, JR, M.L.S.

Director of Science and State Museum

JOHN M. CLARKE D.Sc. LL.D.

Chiefs and Directors of Divisions

- Administration, HIRAM C. CASE
- Agricultural and Industrial Education, LEWIS A. WILSON
- Archives and History, JAMES SULLIVAN M.A. Ph.D.
- Attendance, JAMES D. SULLIVAN
- Educational Extension, WILLIAM R. WATSON B.S.
- Examinations and Inspections, GEORGE M. WILEY M.A.
- Law, FRANK B. GILBERT B.A., *Counsel*
- Library School, FRANK K. WALTER M.A. M.L.S.
- School Buildings and Grounds, FRANK H. WOOD M.A.
- School Libraries, SHERMAN WILLIAMS Pd.D.
- Visual Instruction, ALFRED W. AERAMS, Ph.B.

## INTRODUCTION

A constitutional convention is of great importance whatever its immediate and specific results, because it brings into review the fundamental governmental relations and gives intimation in its proceedings of the questions of deepest concern that are arising in the public mind.

The New York State Constitutional Convention held in 1915 was of particular interest to the schools, even though the proposed body of revision was not adopted, for the reason that the doctrines and policies of the State touching education had renewed discussion, expression and definition.

The only amendment, relating directly to education, discussed at length, was that proposed by the education committee, of which President Schurman was chairman. The record of the consideration of this amendment is briefly as follows:

*Revised Record, p. 928*

Education committee reported following amendment to article IX, section 1, of the present constitution to be inserted before the words in the present section. "The State shall continue its supervision and control of the education of children as a state function, and no powers in derogation thereof shall be conferred upon the local authorities." Debate in committee of the whole by Mr Schurman and others and committee reported progress.

*Revised Record, p. 973*

Debate continued in committee of the whole by Mr Shipman and others. Committee reported progress.

*Revised Record, p. 1065*

Debate continued in committee of the whole. Mr E. N. Smith offered the following amendment to take the place of the amendment submitted by the committee on education. "The State shall take care that all the children thereof are educated according to the standard now or hereafter prescribed by it for such common schools or according to a substantial equivalent thereof and shall forever have the supervision and control over education deemed by it necessary to accomplish such results." Mr Wickersham proposed a substitute for the amendment offered by the committee on education as follows: "The supervision and control of the education of the children of this State shall remain the duty and function of the State and shall never be surrendered." Committee of the whole reported progress.

*Revised Record, p. 1100*

Consideration of amendment resumed in committee of the whole. Mr Wickersham withdrew his substitute. Mr E. N. Smith's amendment rejected. Amendment submitted by committee on education adopted by committee of the whole.

*Revised Record, p. 2346*

Question before the convention on the adoption of the proposed amendment as reported by the committee on education and adopted by the committee of the whole. Debate. Mr Shipman proposed an amendment that the word "secular" be inserted before the word "education" in the proposed amendment. Motion agreed to on Mr Shipman's amendment (p. 2347) and bill before convention as amended.

*Revised Record, p. 2440*

Committee on education, through Mr Schurman, moved to discharge committee on revision and engrossing from consideration of the proposed amendment and to recommit to committee on education with instructions to amend so that the amendment would read as follows: "The State shall continue its supervision and control of the education of children and its free common schools and shall exercise such supervision and control elsewhere than in such schools as it now possesses, and no powers in derogation thereof shall be conferred upon the local authorities." Resolution agreed to.

*Revised Record, p. 3636*

Debate on above amendment. Motion by Mr Stanchfield to recommit to committee of the whole. Standing vote. Ayes 80. Noes 50.

The purpose of this proposed amendment was succinctly set forth by President Schurman in his initial address in speaking of the amendment:

As to the first point, the matter of the control and supervision of education as a state function, I want to say that it is and has been the uniform policy of the State and that it has behind it the consistent, uniform decisions of the courts of the State. We submit to you, therefore, a proposition which shall embody in the constitution something which is now the established policy of the State, and something which the courts have confirmed.

Public education differs from most other functions which we associate with government. Many of them are, have been, can be delegated to municipalities or divisions of the State, but as long as New York has been a state the State has kept control and regulation of education in its own hands. That is not at all inconsistent with the established schools in localities which shall be maintained by the people of those localities; but the officers charged with the operation of schools provided by the laws of the State are not local officers; they are not town, county or city officers, but they are state officers. And the laws enacted to establish in the divisions of the State schools therefore should not be considered as in any way local laws but state laws. That, I say, is the consistent and uniform policy of the State as it has been practised for generations and as it has been sustained by the courts.

What the committee on education purposes is something which has already found its way in the constitutions of a good many other states of the Union. Furthermore, what we propose is something that has been confirmed by the courts of this and other states.

The purpose of the amendment was summarized by Judge Clearwater in the sentence that this amendment "is to put into the constitution a provision regarding the education of the children of the



State which would forever prevent the perversion or diminution of the present and past policy of the State"; and the reason for its incorporation was as briefly set forth in the clear statement of Mr Blauvelt when he said: "When a governmental policy has become settled and fixed, it should be defined in the organic law in unmistakable terms."

There seemed to be practically unanimous agreement on the principle to which it was sought to give constitutional recognition by this amendment. The debate which occurred was chiefly upon the language in which it should be so recognized and permanently embodied in the fundamental law. Those who follow this discussion, which ran through hours of several days, will find the able exposition by Mr Louis Marshall and the home rule discussion by Mr Seth Low, particularly interesting.

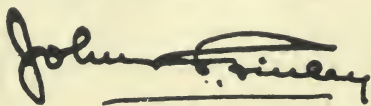
It was because and only because of failure to find a clear, delineating expression for the view which was unanimously held as to the relation of the State to the municipality in the maintenance of the schools, that an amendment was not pressed to adoption.

The chief value of these discussions is that they reiterate the policy of the State and reveal a support for it so general as to give it what amounts to little less than constitutional sanction.

As one looks back, one finds a paragraph in the letter of Mr Root, president of the convention (see page 44) which might have been unanimously agreed to as an amendment had it been presented in that form. At any rate, it is the most lucid expression of what the practice of the State is and will continue to be.

The government of the State will therefore continue, as it has heretofore, to regulate the affairs of education, including the schools and their teachers, by general laws and by such local and special laws as it finds necessary and by such delegation of agency for the State in respect of schools to municipal authorities or to boards of education as it may deem wise, or not at all if it deems that to be wise, but always subject to the sovereign control of the law-making power of the State.

This report presents information of interest; but I invite the special attention of all who have to do with the schools, to the discussion of what underlies all these activities, the concern of the State in the maintenance of good schools, for on this the healthful, prosperous, progressing life of the State depends.



John B. Vinney





## CONSTITUTIONAL CONVENTION

The Constitutional Convention of 1915 convened in the Assembly Chamber, State Capitol, Albany, on April 6, 1915.

Hon. Elihu Root, president of the convention, named the following committee on education:

Hon. Jacob Gould Schurman, <i>Chairman</i>	Tompkins county
Hon. Alphonso T. Clearwater	Ulster “
Hon. William M. McKinney	Suffolk “
Hon. Francis P. Ward	Kings “
Hon. Isaac Sargent	Kings “
Hon. John J. White	New York “
Hon. Andrew J. Shipman	New York “
Hon. Mark W. Potter	New York “
Hon. Peter Donovan	Bronx “
Hon. Caleb H. Baumes	Orange “
Hon. Samuel K. Phillips	Dutchess “
Hon. Clayton Ryder	Putnam “
Hon. John N. Vanderlyn	Ulster “
Hon. Edward A. Mealy	Albany “
Hon. Robert R. Law	Washington “
Hon. Frank R. Lennox	Madison “
Hon. Hubert C. Mandeville	Chemung “

This committee was recognized as one of the strongest in the convention. It gave careful consideration to the educational interests of the State and to each proposition before it. It called upon the University for much information and held many conferences with its representatives. Many public hearings were also held on propositions before the committee. The following amendments to the constitution relating to public education were proposed:

### Introduced by Mr Linde (no. 67; int. 67)

Section 1 *Education of the children of this State shall be forever a function of this State and under the control of the State, and [T] the Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.*

### Introduced by Mr Latson (no. 415; int. 403)

Section 1 of article 9 of the constitution is hereby amended to read as follows:

§ 1 The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the State may be educated [-], and shall provide by appropriate

legislation that the board of education, or other like body, of each and every city shall be an integral part of such state educational system.

Introduced by Mr Schurman (no. 525; int. 513)

Section 1 of article 9 of the constitution is hereby amended to read as follows:

Section 1 *The supervision and control of the education of the children of this State shall remain the duty and function of the State and shall never be surrendered.* The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.

Introduced by Mr R. B. Smith (no. 483; int. 471)

Article 9 of the constitution is hereby amended by inserting therein a new section, to be appropriately numbered, to read as follows:

§ — *The members of the board of education or similar body or the officers having immediate jurisdiction over the educational system of a city shall be appointed by such authorities thereof as the Legislature shall designate for that purpose.*

Introduced by Mr Vanderlyn (no. 103; int. 103)

Section 1 of article 9 of the constitution of the State of New York is hereby amended so as to read as follows:

§ 1 The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State shall be educated, *and wherein the benefits and advantages afforded to children residing in different localities shall be the same in so far as possible; and shall provide for a systematized and improved condition of schools in the rural districts of the State.*

The object of this amendment was to establish the township system of schools for the rural regions of the State.

Introduced by Mr Bell (no. 171; int. 171)

Section 1 of article 2 of the constitution is hereby amended to read as follows:

Section 1 Every male citizen of the age of twenty-one years, *who is able to read and write the English language*, who shall have been a citizen for ninety days, and an inhabitant of this State one year next preceding an election, and for the last four months a

resident of the county and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

The object of this amendment was to prescribe a literacy test as a qualification for voting.

**Introduced by Mr Unger** (no. 102; int. 102)

An additional section is added to article 9 of the constitution so as to read as follows:

§ 2 *There shall be created and maintained by the Legislature a free public college and university wherein the graduates of the State's common schools may receive a higher education.*

**Introduced by Mr Nixon** (no. 92; int. 92)

#### ARTICLE III

*Section — No tax exemption on real estate shall be granted to any church, society, or school under church direction or ownership, nor to any cemetery association, or public or private institution of any character not owned by the federal, state, county or municipal government, but all such property shall be taxed proportionately to its assessed valuation, the said tax to be applied to the general fund of the city, county or state, by which it is levied. The Legislature shall enact such statutes as are necessary for the enforcement of the foregoing provisions.*

**Introduced by Mr Austin** (no. 40; int. 40)

Article 8 of section 3 of the constitution is hereby amended to read as follows:

§ 3 [The capital of the common school fund, the capital of the literature fund, and the] *The capital of the United States deposit fund[,] shall be [respectively] preserved inviolate. The revenue of the said [common school] United States deposit fund shall be*



applied to the support of common schools[;]. [the revenue of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.]

**Introduced by Mr Bayes** (no. 502; int. 490)

Article 9 of the constitution is hereby amended by inserting therein a new section, to be appropriately numbered, to read as follows:

§ — *A pupil shall not be excluded from nor denied admission to any of the free common schools of this State by reason of not having been vaccinated or otherwise inoculated with virus.*

**Introduced by Mr T. F. Smith** (no. 508; int. 496)

Article 8 of the constitution is hereby amended by inserting therein a new section, to be appropriately numbered, to read as follows:

§ — *Property of the State shall not be taxed or assessed for any county, city, town, village or school district purpose.*

**Introduced by Mr Coles** (no. 540; int. 525)

Article 3 of the constitution is hereby amended by adding a new section thereto, to be appropriately numbered, to read as follows:

§ — *All legislative bills providing for the printing of books, pamphlets, or maps shall include in the number of such books, pamphlets or maps to be printed as many copies for distribution to the libraries and schools of the State as the Commissioner of Education may designate.*

**Introduced by Mr A. E. Smith** (no. 552; int. 537)

Section 4 of article 9 of the constitution is hereby repealed.

Such section now reads as follows:

【§ 4 Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning, wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.】

The object of this amendment was to give the Legislature the power to authorize an apportionment of public moneys to parochial schools.



Jacob Gould Schurman



Alphonso T. Clearwater





William M. McKinney



Francis P. Ward



Isaac Sargent



John J. White



Andrew J. Shipman



Mark W. Potter





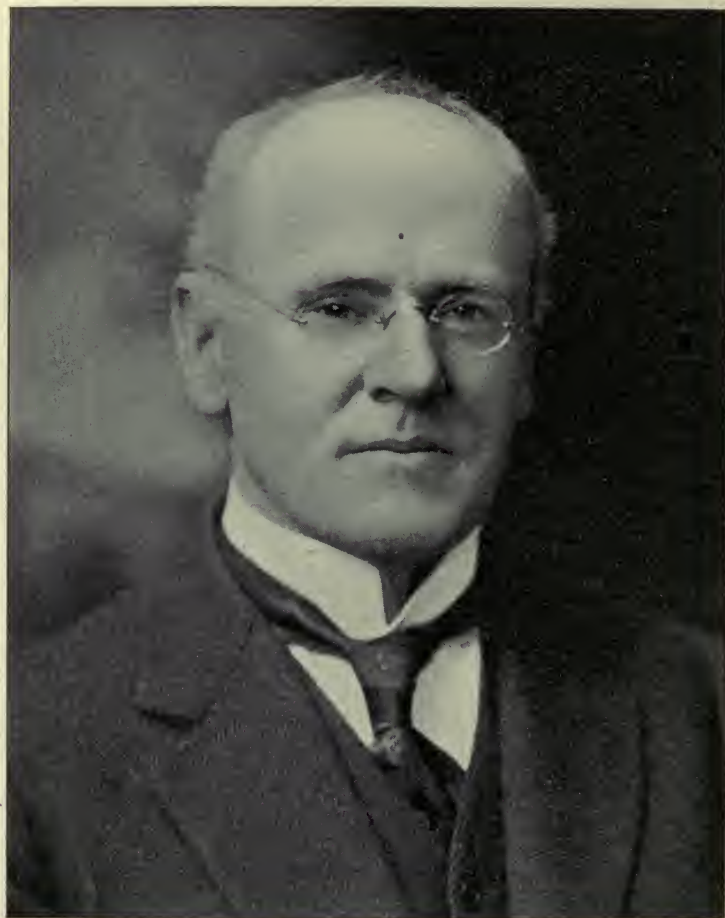
Peter Donovan



Caleb H. Baumes



Samuel K. Phillips



Clayton Ryder



John N. Vanderlyn





Edward A. Mealy



Robert R. Law





Frank R. Lennox



Hubert C. Mandeville

Introduced by Mr Nixon (no. 682; int. 666)

Section 4 of article 9 is hereby amended so as to read as follows:

§ 4 Neither the State nor any subdivision thereof, shall use its property or credit, or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance other than for examination or inspection, *which inspection shall be compulsory upon the legally constituted authorities*, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which denominational tenet or doctrine is taught, *nor shall any textbooks for secular teaching in the common branches in any school, either public or private, denominational or otherwise, be permitted, except the regular textbooks printed in English, authorized by the educational authorities of the district in which such school is located.*

Introduced by Mr F. L. Young (no. 518; int. 506)

Section 2 of article 9 of the constitution is hereby amended to read as follows:

§ 2 The corporation created in the year one thousand seven hundred and eighty-four, under the name of the Regents of The University of the State of New York, is hereby continued under the name of [the university] *the Board of Regents of the Department of Education* of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the Legislature, shall be exercised by not less than nine Regents.

Introduced by committee on education (no. 757; int. 704)

Article 9 of the constitution is hereby amended by inserting therein a new section, to be appropriately numbered, to read as follows:

§ — *Every city shall have a board of education. It shall be a body politic and corporate. It shall, subject to general laws, determine the amount and direct and control the expenditure of all funds to be used for public education within its jurisdiction. Such funds as are raised by local taxation shall be raised in the same manner as the general city taxes but shall be levied and the amounts extended on the roll as a separate school tax.*

Introduced by the committee on education (no. 749; int. 698)

Section 1 of article 9 of the constitution is hereby amended to read as follows:

Section 1 *The State shall continue its supervision and control of the education of children as a state function and no powers in derogation thereof shall be conferred upon the local authorities of any civil division thereof.* The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of [this] the State may be educated.

Introduced by the committee on education (no. 801; int. 698)

Section 1 of article 9 of the constitution is hereby amended to read as follows:

Section 1 *The State shall continue its supervision and control of the education of children as a state function and no powers in derogation thereof shall be conferred upon the local authorities of any civil division of the State.* The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of [this] the State may be educated.

Introduced by the committee on education (nos. 749, 801, 818; int. 698)

Section 1 of article 9 of the constitution is hereby amended to read as follows:

Section 1 *The State shall continue its supervision and control of the secular education of children as a state function and no powers in derogation thereof shall be conferred upon the local authorities of any civil division of the State.* The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of [this] the State may be educated.

Introduced by the committee on education (nos. 749, 801, 818, 820; int. 698)

Section 1 of article 9 of the constitution is hereby amended to read as follows:

Section 1 *The State shall continue its supervision and control of the education of children in its free common schools and shall exercise such supervision and control elsewhere than in such schools as it now possesses, and no powers in derogation thereof shall be conferred upon the local authorities of any civil division of the*



*State.* The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of [this] *the State* may be educated.

In addition to the foregoing, the following propositions involving in some way educational interests were introduced in the convention :

Amendment introductory no. 716, printed no. 863, introduced by the committee on governor and other state officers, named the Education Department as one of the seventeen distinct departments of the state government and provided, in relation thereto, as follows :

“ The Department of Education shall be administered by The University of the State of New York. The chief administrative officer of the Department shall be appointed by the Regents of the University.”

This amendment was adopted by the convention.

Amendment introductory no. 694, printed no. 727, introduced by Mr J. G. Saxe, simply created a department of education without defining in any way the powers and duties of such department.

Amendment introductory no. 179, printed no. 179, introduced by Mr Martin, contained, among other provisions, one to regulate the powers and duties of the Attorney General and provided that such officer should conduct the legal business of the State and that no state officer, department, commission or bureau of the state government, *except the Department of Education*, should employ or designate counsel or maintain a legal bureau.

Amendment introductory no. 219, printed no. 220, introduced by Mr Bunce, empowered The University of the State of New York to recommend to the Governor regulations under which timber and trees on state lands which are dead and fallen or which are detrimental to forest growth may be cut.

Amendment introductory no. 569, printed no. 584, introduced by Mr Angell, created a conservation advisory board consisting of several state officers and making the *Commissioner of Education* a member of such board.

Amendment introductory no. 646, printed no. 662, introduced by Mr Van Ness, related to the issuance of state and municipal securities, including bonds issued by school districts.

Amendment introductory no. 498, printed no. 510, introduced by Mr J. G. Saxe, related to the various departments of state government and provided for a department of public education, the head



of which should be the Commissioner of Education and the President of The University of the State of New York. Amendment introductory no. 540, printed no. 555, also introduced by Mr Saxe, contained a similar provision.

The only amendment affecting public education adopted by the convention was amendment introductory no. 716, printed no. 863. This was the amendment relating to the organization of departments of the state government and created the Education Department in the following language:

“The Department of Education shall be administered by The University of the State of New York. The chief administrative officer of the Department shall be appointed by the Regents of the University.”

Amendment printed no. 757 was unanimously reported to the convention and debated (see Unrevised Record, pages 1070 to 1075). Bill no. 749 was also unanimously reported to the convention and amended in minor particulars as shown in bills printed nos. 801, 818 and 820. For the debates on this proposition, see Unrevised Record, pages 1070 to 1075, 2250 to 2255, 3515 to 3524. Neither of these propositions was adopted by the convention.

The question of public education was somewhat considered by the cities committee. It came up for discussion more or less in connection with the subject of home rule. In this subject the questions which should remain under the control of the State were discussed in connection with the questions over which localities might be given control. Hon. Seth Low of Brooklyn was chairman of the cities committee. His influence in public education is well known and his views upon public school administration were so sound that it was fortunate for public education that a man of this type was made the chairman of that committee.

The convention adopted the following home rule proposition:

**Introduced by the committee on cities** (nos. 781, 823, 830, 851; int. 712)

Article 12 of the constitution is hereby amended to read as follows:

Section 1 It shall be the duty of the Legislature *by general laws* to provide for the organization of *new cities* [ ], and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such

municipal corporations; and the Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town, village or other civil division of the State, or by any contractor or subcontractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof.] *in such manner as shall secure to them the exercise of the powers granted to cities in this article. Except as to cities having more than one hundred thousand population, it shall be the duty of the Legislature to restrict the powers of taxation and assessment so as to prevent abuses in taxation and assessments by any city or incorporated village.*

Section [1 part] 2 The Legislature may regulate and fix the wages and, *except as otherwise provided in this article, the salaries and may also regulate and fix* the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town, village or other civil division of the State, or by any contractor or subcontractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof.

Section 3 *Every city shall have exclusive power to manage, regulate and control its property, affairs and municipal government subject to the provisions of this constitution and subject further to the provisions of the general laws of the State, of laws applying to all the cities of the State without classification or distinction, and of laws applying to a county not wholly included within a city establishing or affecting the relation between such a county and a city therein.*

*Such power shall be deemed to include among others:*

a *The power to organize and manage all departments, bureaus, or other divisions of its municipal government and to regulate the powers, duties, qualifications, mode of selection, number, terms of office, compensation and method of removal of all city officers and employees, including all police and health officers and employees paid by the city, and of all nonjudicial officers and employees attached to courts not of record, and to regulate the compensation of all officers not chosen by the electors and of all employees of counties situated wholly within a city except assistants and employees of district attorneys and except officers and employees of courts of record.*

b *The power, as hereinafter provided, to revise or enact amendments to its charter in relation to its property, affairs or municipal government and to enact amendments to any local or special law in relation thereto. A city may adopt a revised charter or enact amendments to its charter or any existing special or local law in relation to any matter of state concerning the management, regulation and control of which shall have been delegated to the city by law, until and unless the Legislature, pursuant to the provisions of section 4 of this article, shall enact a law inconsistent therewith. The term "charter" is declared for the purposes of this article to include any general city law enacted for the cities of one class in so far as it applies to such city.*

*The legislative body of the city may enact such amendments, subject to the approval of the mayor and of the board of estimate and apportionment of the city if any there be; provided, however, that in a city in which any of the members of the board of estimate and apportionment are not elected or in which no such body exists no such amendment shall be enacted without the assent of two-thirds of all members elected to such legislative body. Every such enactment shall embrace only one subject and shall expressly declare that it is such an amendment. Every amendment which changes the framework of the government of the city or modifies restrictions as to issuing bonds or contracting debts shall be submitted to the Legislature in the year 1916 on or before the 15th day of March and in any year thereafter during the first week of its next regular session, and shall take effect as law sixty days after such submission unless in the meantime the Legislature shall disapprove the same by joint resolution. Every other such amendment shall take effect upon its enactment as above provided without such submission to the Legislature.*

*The Legislature by general law shall provide for a public notice and opportunity for a public hearing by the legislative body of the city concerning any such amendment before final action thereon by it.*

*At the general election in the year 1917 and unless its charter after one revision thereof shall otherwise provide in every eighth year thereafter, every city shall submit to the electors thereof, either at a general or special election, the question, "shall there be a commission to revise the charter of the city?" and may at the same time choose seven commissioners to revise the city charter in case the question be answered in the affirmative, provided, however, that*



*in the city of New York the number of such commissioners shall be sixteen, nine of whom shall be chosen by the electors of the entire city, two by the electors of the borough of Manhattan, two by the electors of the borough of Brooklyn, and one each by the electors of the boroughs of the Bronx, Queens and Richmond respectively. Such revision when completed shall be filed in the office of the city clerk, and not less than six weeks after such filing shall be submitted to the electors of the city at the next ensuing general election or at a special election to be called for that purpose. If such revision be approved by the affirmative vote of the majority of the electors voting thereon such revision shall be submitted to the Legislature during the first week of its session in January of the year following the approval thereof, and if not disapproved by the Legislature by joint resolution prior to the first day of July thereafter shall thereupon take effect as law except as therein otherwise specified. The Legislature shall by general law provide for carrying into effect the provisions of this paragraph.*

*Every charter revision and every amendment of any provision of law, enacted pursuant to this section, shall be deposited with the Secretary of State and published as the Legislature may direct.*

Section [2] 4 All cities are classified according to the latest state enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. [Laws relating to the property, affairs of government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class.]

*The Legislature may delegate to cities for exercise within their respective local jurisdictions such of its powers of legislation as to matters of state concern as it may from time to time deem expedient.*

*The Legislature shall pass no law relating to the property, affairs or municipal government of any city excepting such as is applicable to all the cities of the State without classification or distinction.*

*The provisions of this article shall not be deemed to restrict the powers of the Legislature to pass laws regulating matters of state concern as distinguished from matters relating to the property, affairs, or municipal government of cities.*

*Laws affecting cities in relation to boundaries, water supply, sewerage and public improvements, involving the use of territory outside the boundaries of cities, and in relation to the government of cities in matters of state concern and applying to less than all the cities of the State without classification or distinction are defined for the purpose of this article as special city laws.* Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law [ , relating to a city, ] has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of [such] each city to which it relates, and within fifteen days thereafter the mayor shall return such bill to the clerk of the house from which it was sent, [or] who, if the session of the Legislature at which such bill was passed has terminated, shall immediately transmit the same to the Governor with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during the session at which it was passed any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the Legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

Section [3] 5 All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or



part of a city, and of county officers elected in the counties of New York [and], Kings, *Queens*, *Richmond* and *Bronx*, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand [eight] *nine* hundred and [ninety-five] *seventeen*, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to [any city of the third class, or to] elections of any judicial officers, except judges and justices of inferior local courts.

In the public discussions preceding the election at which the proposed amendment was voted on the question was raised as to whether or not public education in cities was included in the proposed home rule provisions. The Education Department took the position that public education was excluded from the provisions of the home rule proposition.

Section 3 of article 15, if adopted, would have conferred exclusive power upon cities to "manage, regulate and control its property, affairs and municipal concerns." This language can not be held to include public education, because the courts have universally held that public education is not the business of a city, village, town or county, but the business of the State.

Subdivisions *a* and *b* define the word "power" as used in the first line of section 3. It should be observed, however, that the term "power" there relates to the organization and management of "departments, bureaus or other divisions of its municipal government" and to "all city officers and employees including the police and health officers and employees paid by the city." The same rule applied above, when applied to a construction of this provision, excludes public education because it is not a department, bureau or division of municipal concern. The employees are not *city* employees nor are the officers of the school system *city* officers. The term "employees" used above in the phrase quoted does not mean

all employees paid by the city, but it means *police employees* and *health employees*. In other words, the phrase including "all city officers and employees including the police and health officers and employees paid by the city" means police officers and police employees and health officers and health employees. The punctuation shows this. If it had been intended to include teachers who are paid by the city, it would have read *and other employees*. This is the exact meaning which Chairman Low of the cities committee placed upon that phrase in a discussion of the question on the floor of the convention (see last two paragraphs of page 1883 and top of page 1884 of Convention Record 72). A further reason will be found in next to the last paragraph of page 1884. There Doctor Low says that the employees of courts of record are excepted from the provisions because they are part of the administration of justice in a city "and it seems to be entirely proper to leave the control of their salaries with the State." The schools and the courts seem to be placed on a par.

Subdivision *b* of section 3 is a further explanation of the term "power" as used in the first line of section 3. Under this provision cities are given the power to revise or enact amendments to their charters in so far as the charter relates to "its property, affairs or municipal concern." This certainly does not include public education because we have the same principle again, that education is not a municipal affair. This provision goes on to say that they may enact amendments to any local or special law in relation *thereto*. To what does *thereto* relate? Is it not clear that it relates to "its property, affairs, or municipal concern" or, in other words, to purely city matters? This provision further states that the city may amend its charter or may amend any existing special or local law in relation to any matter of state concern provided the "management, regulation and control" thereof "shall have been delegated to the city by law." Therefore, if the Legislature has delegated to cities the power to *manage, regulate and control public education*, then it may be claimed that the city could amend such laws. The whole history of legislation in relation to schools is opposed to any such contention. In more than forty cities of the State the special laws or charters make the city itself a school district and place the management, regulation and control of the schools under the board of education. The board of education is made a corporate body in every city of the State. The courts have repeatedly held that the board of education is a separate entity and

not a part of the city. The courts have further held that the officers of the school system, although enumerated in the list of officers of the city, and that the education department, although listed among the city departments, are separate officers and a separate department, and not city officers or a city department. (See *Gunnison v. Board of Education*, 176 N. Y. and cases cited therein; also *People v. Bennett*, 54 Barb. 480).

### Hon. Seth Low's Opinion

Chairman Low of the cities committee gave the following public expression of his views upon the question in an article prepared by him for publication in a bulletin issued by the High School Teachers Association of New York City:

October 9, 1915

*Mr Alexander L. Pugh, President  
High School Teachers Association  
155 West 65th Street  
New York City*

DEAR SIR:

In reply to your inquiry for my views as to the bearing of the home rule amendment of the proposed new constitution on the subject of education, and especially as the teachers are affected, I take pleasure in complying with your request that I write something for your monthly Bulletin. You will appreciate that the interpretation of the new constitution is a matter for the courts, and that I am not even a lawyer. I am glad, however, to contribute to the understanding of the question what I can as one who was chairman of the cities committee which prepared the home rule amendment.

The cities committee did not attempt to deal with education at all in its home rule amendment, because it was taken for granted that whatever action the convention might take upon the subject of education would be taken upon the initiative of the committee on education. As you know, neither of the proposals of the committee on education were adopted. Only one of them—that which declared in terms that education is a state function—was considered by the convention. This amendment was not adopted because the convention thought it wise to leave well enough alone. Inasmuch as the courts of the State have so uniformly decided that education is a state function, it appeared to the convention that the proposed educational amendment would be likely to raise more new questions than it would settle. Under these circumstances it only remains to consider what the effect is of the home rule amendment upon the subject of education so far as the cities of the State are concerned.

It is clear then, first of all, that education is a state function, or, if you please, in the language of the home rule amendment, a matter of state concern. The home rule amendment specifically reserves to the Legislature the right to pass general laws affecting either the whole State or all the cities of the State without classification or distinction. The home rule amendment





Seth Low

further says, in terms, "The provisions of this article shall not be deemed to restrict the powers of the Legislature to pass laws regulating matters of state concern as distinguished from matters relating to the property, affairs or municipal government of cities." The article goes on to provide that "laws in relation to the government of cities in matters of state concern and applying to less than all the cities of the State without classification or distinction are defined for the purposes of this article as special city laws." It is then provided that special city laws may be passed subject to the suspensive veto of the locality, as at present. It seems to be clear, therefore, that the home rule amendment does not deprive the Legislature of any power that it now has to pass either general or local laws relating to education. Local laws relating to education under the proposed constitution would be enacted in precisely the same manner as at present.

The only remaining question is whether the home rule amendment gives to the cities in the matter of education any initiative which they do not now possess. The home rule amendment expressly declares that "a city may adopt a revised charter or enact amendments to its charter or any existing special or local law in relation to any matter of state concern the management, regulation and control of which shall have been delegated to the city by law, until and unless the Legislature, pursuant to the provisions of section 4 of this article, shall enact a law inconsistent therewith." The provisions of section 4 referred to are the provisions for the suspensive veto of a law relating to less than all the cities of the State. Until I began to examine this subject specifically with reference to your inquiry, I should have said that under this clause every city could adopt charter amendments affecting its educational system subject to the general conditions outlined in the home rule amendment, and subject specifically to the possibility of the State's overriding a city's action because education is a matter of state concern. I did, indeed, so express myself in the communication which I addressed to the Conference of Mayors on the subject of the home rule amendment. My attention, however, has been called to two circumstances which evidently may have decisive bearing upon the situation. The first is that section 300 of the Education Law reads as follows: "Boards of education corporate bodies.—The board of education of each union free school district or city is hereby created a body corporate" etc. The bearing of this fact is that the Education Law is a general law of the State, a law to which all cities will be subject under the proposed constitution. The clause in the home rule amendment already quoted which permits cities in certain cases to amend their charters as to "any matter of state concern" does not permit cities in such cases to enact amendments to general laws of the State but only to their charters "or any existing special or local law." My information is that every city in the State has a board of education except the city of Buffalo. It is clear, therefore, that every board of education is a separate corporation from the corporation of the city for whose benefit it conducts the public school system of the State, and that every board of education will remain a separate corporation until the State itself changes its policy.

This leaves for inquiry only the question whether, in cities like the city of New York in which all the provisions relating to the board of education are included in the charter of the city, the city is not given the initiative



in the matter of revising its charter as to education as the city is clearly given the initiative in all other directions. The answer to that question must depend upon the interpretation of the clause already quoted, namely: "A city may adopt a revised charter or enact amendments to its charter or any existing special or local law in relation to any matter of state concern *the management, regulation and control of which shall have been delegated to the city by law until and unless the Legislature*" etc. This raises the question whether, in view of the fact that the board of education is a separate corporation from the corporation of the city, made so by a general law of the State and not simply by the terms of the charter of a particular city, "the management, regulation and control" of education has in any manner been delegated to any city of the State except Buffalo, which has no board of education. The decision of the Court of Appeals in the case of *Gunnison vs. Board of Education*, 176 N. Y. II, contains certain paragraphs which seem to me to have very direct bearing upon this question. The Court in its opinion says, for example, "It is aparent from the general drift of the argument that the learned counsel for the defendant is of the opinion that the employment of teachers in the public schools and general conduct and management of the schools is a city function in the same sense as it is in the case of the streets or the employment of police and the payment of their salaries and compensation; but that view of the relations of the city to public education, if entertained, is an obvious mistake." At another point the opinion says; "It is difficult to see how the mere listing of a board of education among the city departments makes any change in its corporate powers, duties or liabilities."

In view of the provisions of the general Education Law of the State, I am obliged to say that, contrary to my first impression, I think it very doubtful whether the relation of a city to its schools, excepting the city of Buffalo which has no board of education, is affected in any way by the home rule amendment.

Very truly yours

[Signed] SETH LOW

P. S. In the following clause of the proposed constitution the Legislature is given a new power that, if exercised in regard to education, would have some bearing on the question:

"The Legislature may delegate to cities for exercise within their respective jurisdictions such of its powers of legislation as to matters of state concern as it may from time to time deem expedient." *Extract from section 4, article XV.*

### Senator Blauvelt's Opinion

Hon. George A. Blauvelt who has long been interested in public education, who served for several years in both branches of the Legislature and was chairman of the Senate committee on public education, and who was also a member of the Constitutional Convention, prepared, upon the request of certain teachers of New York City, the following opinion:



George A. Blauvelt

A reading of the home rule article of the proposed constitution adopted by the recent Constitutional Convention leads one to inquire to what extent its provisions may be construed to affect the settled policy of the State in matters pertaining to public education.

It has been the educational policy of the State for more than a century to provide for the general direction and control of its schools and the education of its children. While the constitutions of 1777, of 1821 and of 1846 were silent on the subject, the courts during those constitutional periods repeatedly sustained the proposition that the supervision and control of the education of children was a state function and that schools, wherever located, were *state* institutions and not *local* institutions.

After a most careful consideration of the subject, the constitutional convention of 1894 adopted the existing article on education which reads as follows: "The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of this State may be educated." This section has been construed to mean that all schools supported by taxation are a part of the common school system of the State and subject to the supervision and control of the State, acting either directly through state officers or indirectly through local officers as agents of the State. (*Gunnison vs. Board of Education*, 176 N. Y. 11.) The recent constitutional convention reenacted as article 12 of the proposed constitution the educational article of the present constitution, without change.

It may be claimed that the home rule provision of the proposed constitution, if adopted, will modify the State's educational policy by permitting municipalities to manage, regulate and control local public school systems. I do not think that the courts will so interpret the provisions of the proposed article. \*Section 3 of the article confers exclusive power upon cities to "manage, regulate and control its property, affairs and municipal government," subject to (1) the provisions of the constitution, (2) general laws of the State, (3) laws applying to all the cities of the State, and (4) certain laws applying to a county not wholly within a city (meaning a county outside of the city of New York). Subdivisions *a* and *b* of section 3 enumerate some of the powers contained in the general grant of power above quoted, but not all of them. The general grant of power contained in the first paragraph and in subdivisions *a* and *b* withholds from the city the control of matters of state concern, but by a provision in subdivision *b* a city may regulate even matters of state concern within its boundaries until the Legislature intervenes. There is nothing in the general grant of power or in the enumerated powers contained in subdivision *a* which relates in any way to public education, for the power to "manage, regulate and control" municipal property affairs and government can in no sense of the word be construed to include the power to regulate and control the public school system of a city which, under the settled policy of the State, is a matter of state concern.

Whatever power is given to a city to regulate and control school affairs must be found in subdivision *b* which relates to the amendment of existing charters and of special laws relating to cities and the adoption of new charters. It specifically provides in that connection that "a city may adopt a revised charter or enact amendments to its charter or any *existing special or local law in relation to any matter of state concern, the management, regulation and control of which shall have been delegated to the city by law, until*



and unless the Legislature, pursuant to the provisions of section 4 of this article, shall enact a law inconsistent therewith." In other words, municipal authorities may amend existing charters and special laws relating to cities without the intervention of the Legislature, except where the amendment "changes the framework of government of a city." The framework of the government of a city which the city is not authorized to change without submission to the Legislature applies only to the general outline or plan of the city's governmental structure. The power of amendment therefore extends to any matters of state concern, the management, regulation and control of which shall have previously been delegated to the city by law.

Were it not for the specific reenactment of the existing article on education, the language of subdivision *b*, if literally interpreted, might be construed as a grant of power to cities over all school matters, the control and management of which had previously been delegated to municipal authorities as agents of the State until such time as the Legislature might enact a law inconsistent therewith.

I doubt very much whether the courts would place that construction upon the section for the reason that it would for the first time in the history of the State confer exclusive power upon a city over matters pertaining to the public school system, even though that power might subsequently be revoked by the Legislature.

In construing the section resort may be had not only to the language employed, but to the intent of the convention in adopting the section. This is a well-recognized rule of constitutional construction. It will be observed in the first paragraph that the term "power" relates to the organization and management of "departments, bureaus or other divisions of its municipal government" and to "all city officers and employees, including the police and health officers and employees paid by the city." This language would exclude public education because it is not a department, bureau or division of municipal government. School employees are not city employees, nor are school officers city officers, though both may be paid by the city. School employees and school officers, like the employees and officers of the Supreme Court, are state employees and state officers. Then, too, the term "employees" used in the phrase quoted does not mean all employees paid by the city, but it means *police* employees and *health* employees. In other words, the phrase including "all city officers and employees including the police and health officers and employees paid by the city," means police officers and police employees and health officers and health employees. If it had intended to include teachers, who are paid by the city, it would have read "and other employees." This is the exact meaning, I find, which the Hon. Seth Low, chairman of the cities committee, placed upon that phrase in a discussion of the question on the floor of the convention (pages 1883 and 1884 of record). On page 1884 Doctor Low further says that the employees of courts of record are excepted from the provisions because they are a part of the administration of justice in a city and it seems to be entirely proper to leave the control of their salaries with the State. The schools and the courts are therefore placed on a par.

In subdivision *b* is an explanation of the term "power" as used in the first paragraph. Under this provision cities are given the power to revise

or enact amendments to their charters in so far as the charter relates to "its property, affairs or municipal concern." This certainly does not include public education for the reason that education is not a municipal affair. The provision also provided that cities may enact "amendments to any local or special law in relation thereto." To what does *thereto* relate? It would seem to be clear that it relates to purely city matters.

In addition, the subdivision provides that the city may amend its charter or amend any existing special or local law in relation to any matter of state concern, provided the "management, regulation and control" thereof "shall have been delegated to the city law." If the Legislature has delegated to cities the power to manage, regulate and control public education, then it may be claimed that the city could amend such law. The whole history of legislation in relation to schools is opposed to any such contention. In more than forty cities of the State special laws or charters make the city itself a school district and place the management, regulation and control of the schools under a board of education. The board of education is made a corporate body in every city of the State. The courts have repeatedly held that a board of education has a separate entity and is not a part of the city. The courts have further held that the officers of a city school system and its education department, although enumerated in the list of officers and departments of the city, are separate officers and a separate department and not city officers or a city department.

However, in my opinion, the whole question has been settled by the constitutional convention in its reenactment of the educational article contained in the present constitution. It is a well-settled rule of construction that the constitution must be examined with a view to ascertaining the meaning of each and every part. The presumption and legal intent is that each and every clause in a written constitution has been inserted for some useful purpose and therefore the instrument must be construed as a whole in order that its intent and general purposes may be ascertained. As a necessary result of this rule it follows that wherever it is possible to do so each provision must be construed so that it shall harmonize with all others without distorting the meaning of any of such provisions, to the end that the intent of the framers may be ascertained and carried out and effect given to the instrument as a whole.

It was clearly the intent of the convention, in retaining in the new constitution the educational provisions of the old, that public education should continue to be a sovereign duty of the State and not a matter of local concern. The convention must also be presumed to have reenacted the article with knowledge of its settled judicial construction and the courts will be bound to adhere to that construction.

It is unfortunate that the constitutional convention did not accept the amendments suggested by the committee on public education which proposed to write into the constitution in unmistakable terms that the supervision and control of the education of children was a state function and that schools, wherever located, were state institutions and not local institutions. Had it done so, there would now be no doubt as to the construction to be placed upon the home rule article so far as it pertains to the subject of education.

In view of the settled policy of the State on the subject and the reenactment of the existing educational article in the proposed constitution, with its



long line of judicial interpretations, the conclusion seems irresistible that the proposed home rule article in no wise relates to the subject of public education, but that all constitutional provisions on the subject are embraced within the article on public education.

### Hon. Elihu Root's Opinion

Hon. Elihu Root, president of the Constitutional Convention and one of the great constitutional lawyers of the country, expressed in a communication to President Finley the following opinion:

*Clinton, New York*

*October 15, 1916*

MY DEAR DOCTOR FINLEY:

I have received your letter of October ninth relating to the control of the schools under the revised constitution. I entirely agree with your understanding that the provisions of that instrument make no change in the control of the schools. There is no doubt or room for question that education is a matter of state concern. That is declared in the most solemn form in the article of the constitution which provides:

“The Legislature shall provide for the maintenance and support of a system of free, common schools wherein all the children of this State may be educated.”

This provision is not only continued in the revised constitution but it is reinforced by the provision of the new article which makes the Department of Education one of the civil departments of the state government and provides that,

“The Department of Education shall be administered by the University of the State of New York; the chief administrative officer of the department shall be appointed by the Regents of the University.”

If any authority were needed for so plain a proposition it would be found in the decisions of our courts, which have always and repeatedly held education to be a matter of state and not municipal concern.

The home rule article of the new revision expressly excludes matters of state concern (including education) from the transfer of power to local authorities. It provides:

“The provisions of this article shall not be deemed to restrict the powers of the Legislature to pass laws regulating matters of state concern as distinguished from matters relating to the property, affairs, or municipal government of cities.”

The government of the State will therefore continue, as it has heretofore, to regulate the affairs of education, including the schools and their teachers, by general laws and by such local and special laws as it finds necessary and by such delegation of agency for the State in respect of schools to municipal authorities or to boards of education as it may deem wise, or not at all if it deems that to be wise, but always subject to the sovereign control of the law-making power of the State.

Very sincerely yours

[Signed] ELIHU ROOT



Elihu Root

RECORD OF THE DEBATES IN THE CONSTITUTIONAL  
CONVENTION ON THE EDUCATIONAL PROPOSITIONS

The debates in the Constitutional Convention on subjects before that body relating to public education, communications and petitions submitted to the convention, and reports of committees relating to education, etc. are of such vital importance to the educational workers of the State that the substance of the proceedings of that body in relation to education are given in this report to make the matter accessible to all teachers, school officers, and others interested in the subject of education.

On May 14th the following communication from the teachers of Public School 22 in the city of New York was received:

*Hon. Elihu Root,*  
*President, Constitutional Convention,*  
*Albany, N. Y.:*

DEAR SIR:

The teachers of Public School 22, twenty-eight in number, do earnestly protest any action by the Constitutional Convention tending to impair the permanency of the salary schedules and their absolute equality in the different boroughs of the city of New York. We believe that any uncertainty as to tenure of office or amount of salary will react unfavorably upon the children of the city. We believe that the interests of the children, the most valued possession of the State, can be best conserved by retaining the present educational statutes.

Respectfully yours

GRACE M. PERRY

*For the Teachers*

On June 10th Hon. A. E. Smith of New York City offered amendment introductory no. 537 which appears above, and which was referred to the committee on education. In offering such amendment, Mr Smith spoke as follows:

Mr President, I don't know that I have any objection, but the resolution is really empowering the Legislature to make an appropriation or to authorize a civil division of the State to make an appropriation in aid of denominational schools. It could very properly go to the committee on powers and duties of the Legislature. However, I have no objection to the reference as made.

On June 30th Israel T. Deyo of Binghamton presented a petition to the convention protesting against the proposal of the present constitution which prohibits appropriations of public moneys for the support of sectarian schools. This petition was presented by request and upon the suggestion of Mr Deyo it was referred to the committee on education (Record, p. 531).



On July 1st in a discussion on the legislative apportionment question Hon. A. E. Smith of New York made the following remarks upon what he believed the action of the State should have been in relation to appropriations for educational work outside of New York City:

Upstate normal schools: We built them all ourselves; every brick; everything that goes into them; not only built them for ourselves, we helped build them for the rest of the State. In 1910, \$771,000. In 1913, \$904,000. So far as the business of education is concerned we did a little better for the upstate people than they did for themselves.

Cornell University, the School of Agriculture. In 1910, \$497,094, total appropriation; 1911, \$552,928; 1913, \$1,013,428. How many boys from Senator Wagner's district are in Cornell? The agricultural department itself in 1910, \$906,000; 1913, \$1,029,000. Delhi School of Domestic Science, not heard of in 1910 or 1911. A \$50,000 appropriation to start it in 1913. Long Island School of Agriculture, \$190,000; Cobleskill, \$40,000 in 1911; \$20,313 in 1913. The State Fair, \$153,000 in 1910; \$221,000 in 1913. Does it look as though the great city was lacking in a proper appreciation of the agricultural interests of the State?

In a discussion of amendment introductory no. 289, offered by Hon. R. B. Smith, Hon. George W. Wickersham spoke as follows (Record, p. 758):

And in section 4 of article 9 it says, "Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught."

So that we find in those, and possibly in some other, provisions of the constitution, restrictions upon the power of various branches of the government to appropriate moneys or to recognize claims, and for that reason I have suggested as more comprehensive, more consonant with the other provisions of the constitution, the language of the amendment which I have proposed and I have used in that the phraseology of the other section in which these civil divisions of the State are prescribed.

And in a further discussion of the same proposition the following took place (Record, p. 762):

Mr D. Nicoll— . . . Now, those words, "the civil divisions of the State," under this provision of the constitution, have been frequently discussed in the Court of Appeals, and my understanding of those decisions is that they have been construed broad enough to include every governmental agency, and that seems to be the effect of the decisions which are quoted in this miniature constitution, under the civil service provisions, section 9 of article 5. If that is the state of the law at the present time, why, nothing further is needed.

Mr Marshall—Do you think that it refers to a board, or to an individual officer?

Mr D. Nicoll—It includes all governmental agencies.

Mr Latson—May I inquire from Mr Nicoll whether, while the term "school district" may have been considered as falling within the term "civil division," has the term "board of education" been construed to fall within that term?

It occurs to me that under the language suggested by Mr Marshall, a board of education would clearly be included, but without the use of the words thus suggested, it seems to me there might be some doubt about it.

Mr D. Nicoll—Well, I do not recollect any decisions of the Court of Appeals relating to the board of education. There may be some.

Mr Latson—Without those words suggested by Mr Marshall, it occurs to me there might be some doubt.

On July 19th Dr Jacob G. Schurman presented the following report to the convention:

Mr Schurman—By unanimous consent, Mr President, I should like to present this report of the committee on education.

The President—Is there objection to the reception of the report of the committee on education? The Chair hears none and the report is received. The secretary will read the report.

The Secretary—Mr Schurman, from the committee on education, to which was referred proposed amendment by Mr Linde, no. 67, introductory no. 67, entitled: "Proposed constitutional amendment. To amend section 1 of article 9 of the constitution, relating to education;" and proposed amendment by Mr Schurman, no. 525, introductory no. 513, entitled: "proposed constitutional amendment. To amend section 1 of article 9 of the constitution, in relation to the supervision and control of education by the State;" reports by proposed amendment entitled: "proposed constitutional amendment. To amend section 1 of article 9 of the constitution, in relation to the supervision and control by the State of the education of children." The committee on education requests that such proposed substituted amendment be referred to the committee of the whole.

The Secretary—Second reading. To amend section 1 of article 9 of the constitution, in relation to the supervision and control by the State of the education of children.

The President—The question is on agreeing to the report of the committee on education. Is there any disposition proposed of the bill reported by the committee? If no other disposition is moved, the bill will be referred to the committee of the whole and is so referred.

The following is taken from the record of the proceedings of the convention on July 24th (Record, p. 883):

The President—. . . A report is on the President's table, made by Mr Schurman, chairman of the committee on education, yesterday. The Chair suggests for the convenience of the members that the same disposition be made of that; that it be printed and lie over until Monday. Without objection, that order will be made.



The President—Are there any other reports of standing committees?

The bill reported by Mr Schurman will have its formal reading.

The Secretary—By the committee on education: proposed constitutional amendment.

Second reading—To amend article 9 of the constitution, in relation to city boards of education.

The President—Without objection, the report will be printed, and lie over until the next session of the convention.

The following is taken from the record of July 26th (p. 889):

Mr Schurman—The committee on education has completed its work, and as a result it has laid before the convention two proposed amendments. One of these is now on the calendar. The other was presented on Saturday and ordered printed, and then laid on the table. I suppose, in the absence of objection, that would go automatically to the committee of the whole.

The President—The gentleman wishes to call up the amendment now. The secretary will report the proposed amendment reported by the committee on education Saturday.

The Secretary—Mr Schurman, from the committee on education, reported by proposed amendment, entitled "Proposed constitutional amendment to amend article 9 of the constitution, in relation to city boards of education" (introductory no. 704) which was read twice, and said committee reported in favor of the passage of the same.

The President—Any motion to be made regarding the disposition of this proposed amendment? If not, it will be referred to the committee of the whole.

In speaking on proposition no. 742 relating to the registration and voting of absentees from an election district, Hon. Meier Steinbrink made the following reference to students in attendance upon educational institutions (Record, p. 896):

After reading that I communicated with the Department of the Interior, the Bureau of Education, and to my amazement I learned that in the states of New Hampshire, Massachusetts, Connecticut, Pennsylvania, New Jersey, and the District of Columbia, there were 4949 New York students registered at universities in these states. In addition, in the State of New York there are 19,498 students registered at colleges within the State of New York, but away from their homes—a total of 25,000 the majority of whom are over the age of 21.

On July 27th the debate was opened by President Schurman of Cornell University, one of the delegates at large in the convention, upon proposition no. 749 reported by the committee on education. The following debate took place (Record, p. 928):

Mr Schurman—The first section of article 9 of the constitution now reads as follows: "The Legislature shall provide for the maintenance and support of a system of free, common schools, wherein all the children of this State may be educated." The committee on education recommends that that be

amended by inserting a sentence before it to read as follows: "The State shall continue its supervision and control of the education of children as a state function, and no powers in derogation thereof shall be conferred upon the local authorities of any civil division thereof." The committee on education gave numerous hearings on this subject, and gave to it very careful consideration, and embodied their notions in a number of tentative plans. They finally reached a proposition which they unanimously adopted, so that I present to you on behalf of that committee the unanimous report.

I want to add, however, that after the report was adopted, we thought that a verbal change might be made in the amendment, and that consisted in striking out the final word, "thereof," so that the end of the sentence would be, "any civil division." The reason for that verbal change is that the sentence as it now stands requiring "supervision and control" but as to "any civil division" must refer to a civil division of the State and can not refer to anything else. The last "thereof" seems unnecessary and at a later stage of the proceedings I shall move that that be stricken out. As an explanation of the phraseology of the provision I shall address myself very briefly and shall not take much time on the subject matter of the proposed amendment which deals with the control and regulation of the state-owned education, with the continuance of that control and regulation and with the proposal that it shall not be surrendered by the State.

As to the first point, the matter of the control and supervision of education as a state function I want to say that it is and has been the uniform policy of the State and that it has behind it the consistent, uniform decisions of the courts of the State. We submit to you, therefore, a proposition which shall embody in the constitution something which is now the established policy of the State, and something which the courts have confirmed.

Public education differs from most other functions which we associate with government. Many of them are, have been, can be delegated to municipalities or divisions of the State, but as long as New York has been a state the State has kept control and regulation of education in its own hands. That is not at all inconsistent with the established schools in localities which shall be maintained by the people of those localities; but the officers charged with the operation of schools provided by the laws of the State are not local officers; they are not town, county or city officers, but they are state officers. And the laws enacted to establish in the divisions of the State schools therefore should not be considered as in any way local laws but state laws. That, I say, is the consistent and uniform policy of the State as it has been practised for generations and as it has been sustained by the courts. It only remains for me to add — and I desire to speak with the utmost brevity in confirmation of that proposition — and perhaps you would be interested before I refer to New York in a reference to some other state.

Mr Franchot — I should like to ask an explanation of the exact meaning in your mind of the words "in derogation thereof" and the particular word previous, the words in the provision to which it is contemplated the word "thereof" shall be related.

Mr Schurman — I suppose the gentleman would not object to my answering his question in two orders. I pointed out that I was dealing with the subject of control and regulation; secondly, with the continuance of control and regulation, and thirdly, with the question of derogation, and I will keep his

question in mind when I come to consider that third point. On the first point, namely, the question of supervision and control, I want to read you a few extracts from the constitutions of other states and I have selected those which have been recently amended so that you may have the latest word on the subject. Here for instance is an extract from the constitution of the state of Idaho, amended in 1912:

"The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the Legislature of Idaho to establish and maintain a general, uniform and thorough system of public, free and common schools.

"Section 2, the general supervision of the state educational institutions and public school systems of the state of Idaho, shall be vested in a state board of education," and again in the same constitution showing the amount of control it has been wise to put into the constitution: "The legislature may require by law that every child of sufficient mental and physical ability shall attend the public school throughout the period between the ages of 6 and 18 years for a time equivalent to three years, unless educated by other means."

Here is an extract from the constitution of Iowa, amended in 1904:

"The educational interest of the state, including common schools and other educational institutions, shall be under the management of a board of education."

And again, "The board of education shall have full power and authority to legislate and make all needful rules and regulations in relation to common schools."

Another extract from the constitution of the state of Michigan:

"The Legislature shall continue a system of primary schools whereby every school district in the state shall provide for the education of its pupils without charge for tuition."

Here is one from the constitution of New Mexico, amended in 1914:

"A uniform system of free public schools sufficient for the education of and open to all children of school age in the state shall be established and maintained."

Section 3: "Schools, colleges, universities and other educational institutions, provided for by this constitution, shall forever remain under the exclusive control of the state."

Another from the constitution of the state of Wisconsin:

"Supervision of public instruction shall be vested in a state superintendent and such other officers as the Legislature shall direct."

You see then, Mr Chairman, what the committee on education purposes is something which has already found its way in the constitutions of a good many other states of the Union. Furthermore I have said what we propose is something that has been confirmed by the courts of this and other states. In the case of the People versus Bennett, 54 Barb. 480: "Neither the officers created by the act of April 12, 1867, to consolidate the several school districts and parts of districts within the corporate limits of the village of Saratoga Springs and to establish a free union school or schools therein, nor the trustees of school districts within that village are county, city, town or village officers within the meaning of the first and second branches of section 2 of article 10 of the state constitution."



One of the most recent cases, one of the most important cases, is that of *Gunnison versus the Board of Education*, 176 N. Y. The opinion in that case was written by the late Justice O'Brien, and was concurred in by Chief Justice Parker, Justices Bartlett, Gray, Cullen, Haight and Werner. The point at issue was whether in the city of New York the board of education or the city should be sued for payment of an educational bill. A bill for educational services. The court says: "It is apparent from the general drift of the argument that the learned counsel for the defendant is of the opinion that the employment of the teachers in the public schools and the general conduct and management of the schools is a city function, in the same sense as it is in the case of the care of the streets or the employment of police and the payment of their salaries and compensation; but that view of the relations of the city to public education, if entertained, is an obvious mistake. The city can not rent, build or buy a schoolhouse; it can not employ or discharge a teacher; and has no power to contract with teachers with respect to their compensation. There is no contract or official relation expressed or implied between the teachers and the city. All this results from the settled policy of the State from an early date to divorce the business of public education from all other municipal interests or business and to take charge of it as a peculiar and separate function through agents of its own selection and immediately subject and responsive to its own control."

And later in the same decision the court says, in reply to the contention of the learned counsel for the defendant, that the situation had been changed in New York City by the adoption of a new charter. The report says: "If the State has departed from the settled policy that has prevailed since its organization, of keeping the work of public education and the control and management of its schools separate and distinct from all other municipal interests and business by the selection of its own agents, and clothing them with corporate powers to represent the schools, such as school districts and boards of education, and has devolved these powers and duties directly upon the city, we would naturally expect to find such a departure or notable change expressed in language so clear that no doubt could arise as to this change of policy. If the board can not be sued for teachers' wages and the teacher must resort to a suit against the city, then surely the board must have sunk into a mere city agency, and it no longer has any use for independent corporate powers. Public education then becomes a city function, exposed to the taint of current municipal politics, and to any and every general mismanagement that may prevail in city departments."

And, again, "We have seen that the policy of this State for more than half a century has been to separate public education from all other municipal functions and entrust it to independent corporate agencies of its own creation, such as school districts and boards of education, with capacity to sue and be sued in all matters involved in the exercise of their corporate powers. We have seen that during this long period of time this court and all the courts of this State have accepted this rule and acted upon it, and not until now, and in this case, has any question been raised with respect to the right of a teacher to bring suit against the board of education to recover salary or wages."

Nothing, it seems to me, Mr Chairman, could be more emphatic than the opinion of the court in that *Gunnison* case. I have other cases before me



from our New York courts. Here, for instance, is the opinion of Mr Justice Gaynor, in the case of Ridenour vs. the Board of Education, 15 Misc. 418. "He is an employee," says Mr Justice Gaynor, "of the board of education. It is not a part of the corporation of the city of Brooklyn, but is itself a local school corporation, like every board of school district trustees throughout the State, and is, like every such board, an integral part of the general school system of the State. It is a state and not a city agency, doing state and not city work and functions. Education is not city, village, county, or town business. It is a matter belonging to the state government."

I have before me, Mr Chairman, citations from the courts of other states, but I will not take up the time of the convention in reading them, because I think that I have already sufficiently established my position that the supervision and control of the education of the children is a state function.

Mr C. A. Webber—I understand that there was considerable difficulty experienced in the committee in the framing of the language of this amendment. May I ask, was it not the purpose in the selection of this special language to avoid any possible implication that the State might or should interfere in any way with private schools?

Mr Schurman—I will answer that question now. The committee provides that the supervision and control of the education of the children shall be continued. Now, Mr Chairman, the gentleman from New York has called attention to the fact that we have in the State of New York not only a system of public schools, but also a large number of private schools which are cooperating with the State, aiding it in the discharge of this most important function, schools which have won for themselves an excellent standing and reputation amongst us. The committee was very desirous in this report, in this recommendation, that there should be no phrase or word that suggested or would suggest any change in the present status in regard to those schools, and the committee feels that they have, after very much and long wrestling with the problem, solved that difficult point by the phraseology which they have used: "The State shall continue its supervision and control of the education of children as a state function." We ask for no change. We are for the *status quo*. The fact is that not only in connection with public schools, but in connection with private schools, the State of New York exercises a measure of supervision and control. The amount of supervision and control is not the same in both cases, but supervision and control exist in all cases. For instance, the State requires that all children shall go to school for a certain period of time. The State also requires that all schools, private or public, shall be so organized and equipped that they shall give the minimum of instruction required by the State, satisfy the standards which the State lays down. I may say to the gentleman from New York that the point which he raised was very thoroughly thrashed out in the committee. It cost us a great many days' labor and, in fact, very great efforts to formulate this phraseology, but we were of the opinion that we had finally reached language which satisfied all the interests of the State, and the form in which the resolution was submitted to this convention is a form which, as I say, commanded the unanimous support of the committee.

In the third place, the committee's proposed recommendation deals with the subject of possible delegation of power to local authorities. There must be, in connection with the school system of the State, a large delegation of powers to local bodies. It is a state system of education, but the schools are local schools and are maintained by local authorities, but the point is that the State can exercise even over the local authorities a certain amount of regulation and control. Here, for instance, is a very interesting case from the courts of Kansas, the *State v. Freeman*, 61 Kan. 90. "This is a proceeding to compel the county commissioners of Elk county to carry out the provisions of chapter 189 of the Laws of 1899, entitled, 'An act to establish a high school at Howard, Elk county, Kansas.' Two of the commissioners declined to appoint a board of trustees as the act required, on the alleged ground that it is an unconstitutional interference with the right of local self-government. The contention made in their behalf is that the county can not be compelled to build and maintain a high school without the consent of those who are required to pay for it, and that the Legislature exceeded its power when it attempted to impose such a task and burden upon them. No express prohibition of such legislation is called to our attention, and no inherent or fundamental right implied in the constitution, that we know of, is violated." I am reading from the opinion of the court. "The matter of education is one of public interest which concerns all the people of the state, and is therefore subject to the control of the Legislature. Municipalities and political organizations are the creations of state authority, and are all within legislative control. While education is a matter of state interest and public concern, the high school being especially beneficial to the people of the community in which it is established, the burden of maintaining it may be rightfully cast upon them. It is conceded that the Legislature has full power to compel local organizations of the state to maintain common schools, and, as schools of a higher grade are authorized by the constitution, no reason is seen why such organizations may not be compelled to maintain high schools."

That is to say, while the education of children is a state function, under supervision and control of the State, the burden of maintaining the schools falls, in the main, upon the localities, but the State has the right to see that the localities provide for the education of children as laid down in the educational laws of the State.

And, Mr Chairman, in our own State, in a city not very far from this in which we are now met, the school authorities once refused, when the autumn came around, to open the schools, and the Superintendent of Public Instruction stepped in, appointed a temporary superintendent, temporary teachers, janitors and attendance officer, and opened and operated the schools and continued on until the local authorities acknowledged they were ready to perform their duty, and in that case, *Hutchinson v. Skinner*, 21 Misc. 729, Mr Justice Chester held that the State Superintendent of Public Instruction was within his legal rights in so acting.

What is proposed by the committee on education, then, Mr Chairman, is that the present arrangement under which localities, in the main, maintain their own schools, subject, however, to the control and supervision of the State, shall remain unchanged. There is much talk in this convention of home rule. I myself hope that this convention will be able to work out

plan of home rule which will be reasonably satisfactory to all the people of the State. But, in any such system of home rule, it is important to remember that education occupies a place of its own, and the committee on education recommends in this proposed constitutional amendment that "no powers in derogation thereof," that is, of the supervision and control, "shall be conferred upon the local authorities of any civil division thereof."

Mr Franchot—I understand that all matters referring to education heretofore, all laws enacted heretofore by special bills under the provisions of article 12 as it now stands, have been invariably submitted to the Mayor, or the mayor and common council, as the case may be, for their approval. Is it the intent of this provision that, assuming that article 12 should remain as it is, there should be no necessity of such submission to the local authorities for their approval of special city laws dealing with education?

Mr Schurman—Mr Chairman, I do not exactly see the bearing of that question on the proposal before us. We say: "The State shall continue its supervision and control of the education of children as a state function and no powers in derogation thereof shall be conferred upon the local authorities of any civil division thereof."

Mr Franchot—Let me explain. Are you aware of the fact that it has been the invariable custom in the case of special bills enacted with respect to education in the city of New York, to submit such bills to the local authorities for their action by way of veto, and that on some occasions I believe bills have been passed over the local veto, under the provision for the suspensive veto now contained in article 12?

Mr Schurman—I should think that was a detail which had no direct connection with the proposition we are now considering. We propose to leave the act as it is. We want regulation; we want that measure of supervision and control which the State now exercises to remain vested in the State. We are opposed to ever surrendering one iota of it. We have not favored, however, asking that it shall be increased.

Mr Unger—If by any mischance this convention should give New York City its full share of home rule, would this provision prevent us from passing upon the salaries of our teachers?

Mr Schurman—I do not see that it would, Mr Unger, at all.

Mr Unger—I wanted to make certain on that.

Mr Clinton—Mr Schurman, I understand that in considering the language to be used, you were very particular in using the expression, "The State shall continue." Is it not your idea and that of the committee that that does not change the policy of the State at all, but simply continues that "no powers in derogation thereof shall be conferred upon the local authorities," etc.?

Mr Schurman—I am very much obliged to Mr Clinton for asking that question, because it gives me the opportunity of repeating what I said earlier in my remarks, and what some of the gentlemen perhaps did not hear or have overlooked. That was precisely the object of the committee, to leave everything exactly as it is, to constitutionalize existing practice, without any variation, that practice already having been confirmed by the courts.

Mr Wagner—I would like to ask the opinion of the delegate as to what is the meaning of the word "control" in the education of children? Perhaps I can make what I would like to know clearer. Does that include the administration of a local department of administration, so far as its finances are



concerned, the question of the salary of teachers, the length of term of the superintendents, the standard of qualification of the school teachers, and the salaries which they shall receive — is not that all included under the word "control"?

Mr Schurman — The State exercises its present supervision and control through boards of education. There are fifty-four cities in the State, and in thirty-nine of them those boards of education have exclusive control, independently of the municipal authorities, of educational affairs, such as the employment of teachers, the fixing of salaries, the payment of running expenses, and so on.

Mr Wagner — Mr Chairman, as I understand it, the local authorities in the city of New York, still have — that is, the board of estimate and apportionment — the power of making appropriations for the department of education, and in that they have the power to withhold appropriations which they deem are undesirable or unnecessary.

Mr Schurman — In the city of New York there is a three-mill tax for the schools. At the time of its institution, it was sufficient to provide for the work, but owing to the growth of the city and the increase in expenses, that tax has become insufficient, and the supplemental amount required by the board of education has to be voted by the city financial authorities, the board of estimate and apportionment. If, however, the law was amended so that the three-mill tax were made a four-mill tax, the probabilities are that the board of education would have all the money it needed to run the schools and would be in the same position it was when the three-mill tax was instituted, and in that event it would enjoy an independence of the board of estimate and apportionment, which at the present time it does not possess.

Mr Wagner — Mr Chairman, that is just what I am trying to bring out. Is it your intent in this provision to take away from the local authority all power and control over our department of education? Take, for instance, in the city of New York, including the financial administration of the department.

Mr Schurman — It would take away from the municipal authorities of New York only such powers as might be in derogation of that measure of supervision and control which the State now possesses.

Mr Wagner — That is the point, Mr Chairman, that I am trying to find out, what is meant by the word "control." If the word "control" includes all control over the finances involved in the administration of the department of education, then no future Legislature can pass any laws giving the local authorities any supervision over the finances, and that is one of the strongest arguments made on behalf of home rule from New York to the committee of which Mayor Low is chairman, that, so far as the finances were concerned, that it was right and proper that the local authorities should control that; and this provision, now proposed, it seems to me, would defeat the object sought by the local authorities.

Mr Low — It seems to me, Mr Chairman, that this proposed amendment, which we are now discussing, no. 749, must be read in connection with the proposed amendment no. 757, from the same committee.

Mr Wickersham — Mr Chairman, I rise to a point of order. It is impossible for the delegates in this part of the room to hear Delegate Low, and I ask that order be preserved.



The Chairman — I understand that the gentleman asked the gentleman from Tompkins, Mr Schurman, to give way that he might ask a question.

Mr Schurman — Yes, Mr Chairman, and I am very glad to accept the suggestion of the gentleman from New York, the chairman of the cities committee, which was to the effect that the other proposed amendment submitted to the convention by the committee on education has a very distinct bearing on the question which has just been raised by Mr Wagner, and therefore, Mr Low suggested, I take it, that it would be instructive to the committee of the whole, if that second amendment was now read, and I desire to concur in that suggestion.

Mr Low — Mr Chairman, I would like to read the second amendment and make a short explanation of the problem involved, and then ask Mr Schurman a question, if I may?

The second amendment reads in this way:

“Every city shall have a board of education. It shall be a body politic and corporate. It shall, subject to general laws, determine the amount and direct and control the expenditure of all funds to be used for public education within its jurisdiction. Such funds as are raised by local taxation shall be raised in the same manner as the general city taxes, but shall be levied and the amounts extended on the roll as a separate school tax.”

Now, Mr Chairman, it is true that the State of New York, in the main, has looked upon education as a public function, but its practice has not been uniform. Prior to the incorporation of White Plains and Saratoga Springs as cities by the last Legislature, there were fifty-four cities in the State of New York. In thirty-nine of those cities, the board of education controlled the subject completely, even fixing the amount to be raised by taxation. In nine of them the financial or political officers of the city determined the amount to be raised by taxation. In four, of which the city of New York is one, the system was mixed; that is to say, the board of education had control of a part of the funds, and the financial or political officers of the city had a certain power over the rest of the funds.

Now, sir, all over the State of New York, the controversy is going on in the cities as to whether the schools should and ought to be conducted by the boards of education, or whether the political, financial officers of the city, by reason of their responsibility for financial expenditure, ought to be able to say, not only how much money shall be used or appropriated for the schools, but also what salaries should be paid, and to some extent carry the power as to policies which financial control gives, into the domain of the board of education.

I think the convention should face that question squarely and say whether the financial control of cities is so important that the financial officers shall fix the amount of money to be spent by the schools and indirectly, at any rate, to say how it shall be spent and what it shall be spent for, or whether the boards of education shall be charged with that duty; and if the boards of education are to be charged with that duty, it seems to me that we must go to the full extreme of proposed amendment no. 757, because as long as the responsibility for the schools is divided, there is no possibility of fixing the responsibility as between the inhabitants of the city and those who conduct its schools.

At the present time, whenever the divided system exists, the board of education charges the board of estimate with not giving money enough to the schools. The boards of estimate complain that the boards of education do not use the money in the way in which it is intended to be used; and, therefore, not in one city only, but in a number of cities, the conflict is going on; and it is the duty of this convention, I think, to solve it, and it is the intention, as I understand it, of these two amendments to solve it in favor of control by the State.

Now, I understand, Mr Schurman, that if these two amendments were to be adopted and become a part of the constitution, there is nothing in them that would prevent the Legislature from devolving upon the boards of education, which are local, full and complete authority over the schools by general laws.

The particular question that I want to ask Mr Schurman is this: Is it not the policy, not only of New York State, but broadly of every state in the Union? There may be exceptions, but I know of none where the state has failed to keep all the control that was necessary of its public school system, but many states, in doing that, have provided that the Legislature shall pass no special laws affecting localities in regard to their schools. So that each locality, through its board of education, carries out the general policy of the State.

I perceive in this proposed amendment no. 757, it is stated that the board of education shall, subject to general laws, determine the amount, and so forth, to be used for the schools.

What I want to ask the chairman of the committee on education is this: Whether he thinks it is desirable, in addition to that provision, to say, especially, that the Legislature shall pass no special law on this subject relating to a particular city.

Mr Schurman—The inquiry and the remarks of Mr Low have been very instructive and he has called attention to the other proposed amendment from the committee on education, dealing with the boards of education, an amendment which, probably, answers a good many questions that have been raised here. I think that I may say that the opinion of the committee on education on the subject of general laws entirely covered the point raised by Mr Low, and that it has endeavored to protect the localities from special and local legislation.

If there is a need of any further consideration of that question, of course, the committee on education will be very glad to take it up, but I think, gentlemen, you will see that the proposition which is now before you, no. 749: "*The State shall continue its supervision and control of the education of children as a state function and no powers in derogation thereof shall be conferred upon the local authorities of any civil division thereof.*" The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the State may be educated," that the proposed amendment is not involved and that it does not raise any difficulties, because it merely writes into the constitution the existing practice of the State as confirmed by the courts. The various difficulties and questions which have been raised will, it seems to me, come up in connection with other amendments, and must be met there.

Mr Burkan—I would like to ask Mr Schurman whether he knows of an instance where the Legislature has delegated the power to local authorities involving the supervision and control of the education of children?

From reading this provision, it seems that the purpose is to prevent the Legislature from conferring upon local authorities any supervision or control of the education of children. Now, can you cite an instance where that has been done by the Legislature?

Mr Schurman — I state, Mr Chairman, in reply to the gentleman's question, that the last part of this proposed amendment seemed important in view of the existing situation in the State. One of the greatest problems before this convention is the home rule problem, and in view of that problem it seems desirous to make clear what the attitude of the State should be toward the question of education. We thought, therefore, that it was desirable, not because we are aware of evils in the past, but because, owing to this new situation, which involves new questions, conditions of that kind might arise in the future; and the committee thought that provision should be made by the constitution, that whatever amount of supervision and control the State now exercises, it should retain, and no grant in derogation thereof should be made to local authorities.

Mr Burkan — In other words, it is to be anticipatory of any such a provision in home rule provisions.

Mr Schurman — That was the main idea in the minds of the committee.

Mr Wiggins — In connection with this discussion which has arisen over the interpretation to be given to the word "control," as Doctor Schurman has said, this entire subject must be considered in conjunction with the subject of home rule; and I have no doubt whatever that the committee has anticipated, by reasons of the discussions that have taken place before the cities committee, what the interpretation may be that is given by the courts to the language which shall be used in any proposed home rule bill which may be introduced before this convention.

Now, as an example, if you will permit me to make this observation?

Suppose, as an example, that there should be introduced before this convention a proposed home rule bill which would use these words: "Every city shall have the exclusive power to manage, regulate and control its own property, and local affairs," Where would you be? There would be presented, of course, to the court, the question, Is education a local affair?

That I call to your attention simply because it was one of the subjects which was discussed before the cities committee by the various speakers which appeared before them. They all had peculiar notions. As an example, they even desired that the cities of the State should constitute themselves into a board of public utilities and pass on all public utilities. And they even further raised the question, if that committee were to give to local cities, or to cities, or if the convention were to give to cities the right to manage and control their local affairs — as to whether the Legislature would have the right to pass a special bill for the city of New York, permitting it to go up into the country and increase its water supply.

It has nothing to do with this question and I don't mean to go off into the discussion of home rule except to illustrate what I assume the committee must have had in mind, at the time, if there is employed in any home rule bill, words which mean, of course, that there is granted home rule, the power to manage and control its local affairs, would education be considered a local affair; and I assume, of course, that the committee on education anticipating that, has decided to place this provision in the constitution, so the courts



can not construe it as any other than a state affair; because I can conceive of no greater step backward than that the State of New York should surrender its sovereign right and control over the education of the children of the State; and I assume that this bill was designed for the purpose of perpetuating that which has been in the constitution and which has been construed to be, by the courts, a state function.

Mr Schurman—Mr Chairman, Mr Wiggins is absolutely right in the answer he gives to the question.

Mr Quigg—If, as you say, this proposition is anticipatory to the proposition to be presented on home rule by the cities committee, would it not be in the interest of intelligent action here to postpone its further consideration until that committee has reported and we see what we are voting on in its entirety?

Mr Schurman—Mr Chairman, the question of Mr Quigg seems to be a very natural one, but the conclusion which he suggests is not the one I would give. I have not said the sole motive or reason for the last part of this proposed constitutional amendment was the fact that there might be a grant of home rule made to the cities by the State; I said that was a leading consideration with the committee, and it was; but this committee, Mr Chairman, is a very conservative committee, so far as this report goes. It is asking only that the *status quo* in educational matters be perpetuated by solid, constitutional enactment. Suppose no grant of home rule should be made—a supposition which I myself hesitate to make, because it would be in my opinion such a disaster—nevertheless, we should still insist that the last clause of this sentence was a proper and desirable clause to have in the constitution. And suppose you are to discuss and decide upon a measure of home rule? We still insist that the logical price of that plan is the settlement of the nature of education as a state function.

Mr Wickersham—I think it is obvious that this question is one which will call for very careful consideration by all the delegates, and I move that further discussion of that question be discontinued and that when the committee rises it report progress and ask leave to sit again on the question.

The Chairman—You have heard the motion of the gentleman from New York. Those in favor of that motion will manifest by saying Aye, contrary No. It is carried.

After the consideration of other matters in committee of the whole, that committee reported and leave to sit again on proposition 749 was granted.

On July 29th the following debate occurred upon amendment no. 749, reported by the committee on education (Record, 973):

Mr Shipman—I was not here at the time this measure from the committee on education was brought before this convention but I have read the record upon the subject and it seems to me that the chairman of the committee has expressed very fully and very clearly the object of the amendment and its scope and purpose, and that there remains but little more to be said. Nevertheless, from certain questions asked in the course of debate and from certain statements made by some of the members, it would seem that they had the apprehension that in this amendment the committee sought to state something new, to confer some new powers of a greater development. I can



assure the convention that nothing of the kind was in the mind of the committee. The amendment was sought to be put into the constitution so as to render more definite and certain facts which had been somewhat in dispute before, to draw the boundary line between contentious parties. It is only sought to continue throughout the State of New York the present organization and control of education. It is not sought to introduce any innovation.

The question primarily arose because certain communities in this State had taken the position that the control and direction of the schools within their jurisdiction was primarily a political power which rested in those communities. They absolutely defied the state powers in many cases to carry on the work of education. These questions even under the present constitution were brought into court and were definitely and completely settled in favor of the State. But although those particular questions were settled there remained a large range of matters which are brought forward as not being embraced within the purview of those decisions. It was in order to settle this point that this amendment was placed among those submitted to this convention. As Mr Schurman, chairman of the committee on education, has averred, the Gunnison case, reported in 176 N. Y., uses the broadest language in regard to that, and even at the risk of repeating what has been already stated, I should like to read to the convention a few words.

The court says: "The only relation the city has to public education"—this was a case that arose in New York City—"the only relation the city has to public education is as the custodian and the depository of school funds, and its only duty with respect to that fund is to keep it safely and disburse the same according to the direction of its board of education. The city, as trustee, has the title to the money, but it is under the care, control and administration of the board, and all suits in relation to it must be brought in the name of the board.

"It is apparent from the general drift of the argument that the learned counsel is of the opinion that the employment of teachers in the public schools, and the general conduct and management of the schools, is a city function, in the same sense as it is in the care of the streets, or the employment of police, and the payment of their salaries and compensation. But that view of the relation of the city to public education, if entertained, is an obvious mistake.

"The city can not rent, build or buy a schoolhouse. It can not employ or discharge a teacher and has no power to contract with teachers with respect to their compensation. There is no contract or official relation, express or implied, between the teachers and the city. All this results from the settled policy of the State from an early date to divorce the business of public education from all other municipal interests and to take charge of it as a peculiar and separate function through agents of its own selection, and immediately subject and responsible to its control."

It is, therefore, a question of whether we should have one settled form of policy for education in this State, one settled method of carrying on the business of education, one settled aim and end to be attained to the education provided by the State and its officers, or whether we should have fifty-four different varieties of education in the various cities of this State, to say nothing of the communities lying outside of the city. That doctrine has been reiterated and repeated in various cases in this State, and it falls wholly within the analogies of similar declarations from other states.

Mr Wagner — Are you contending now that the State should have absolute and complete control over the entire administration of the educational affairs of the city of New York, including the financial administration of that department, such as the fixing of salaries, determination of the number of school teachers, the number and character of our schoolhouses, and the amount which we should expend for their construction?

Mr Shipman — Yes, but no department of this State yet has ever decided that the officers of the central body at Albany should have exclusive control as against the inhabitants of the locality affected; and when it comes down to finding out the source of power, to determine who is right in the last resort, who shall be obeyed as against another, the State is supreme in matters of education.

Otherwise, the community may starve out its teachers; it may deprive them, as is the case in New York City, of sufficient educational resources in the matter of buildings and school equipment. There must be some central authority to determine these questions in the last resort. It is in almost direct analogy with the courts. The State administers the laws of justice within its boundaries, although the judges are elected from the various communities they represent, but they do not act in the name of those communities. That is an illustration of the point which I make here. A very clear explanation of this doctrine has been made also in the highest court in the state of Indiana. It was a case in which the relator, Clark, petitioned for the right of mandate to compel the trustees of Monroe township to certify to the county superintendent of schools the number of textbooks required for children, and to procure and furnish such textbooks. In that case the court said:

“The act assailed does not impinge in the slightest degree on the right of local self-government. The right of local self-government is an inherent and not a derivative one. It is the right which a man possesses in virtue of his character as a free man. It is not bestowed by the Legislature nor derived from statutes, but the courts, which have carried to its utmost extent the doctrine of local self-government, have never so much as intimated that it exists as a matter over which the constitution has given the law-making power a supreme control, nor have they gone beyond the line which separates matters of purely local concern from those of state control. Essentially and intrinsically the schools in which are trained the children who are to become the rulers of the commonwealth are matters of the state and not of local jurisdiction. In such matters the state is the unit and the Legislature the source of power. The authority over schools and school affairs is not necessarily a distributive one to be exercised by local instrumentalities, but, on the contrary, it is a central power residing in the Legislature of the state. It is for the law-making power to determine whether the authority shall be exercised by a state board of education or distributed. With that determination, the judiciary can no more rightfully interfere than can the Legislature with a decree or judgment pronounced by a legislative tribunal.”

We are only asking that this amendment shall put in concrete form what does exist today in the laws of the State of New York. We have already done all these things. We have taken control of the schools so that the various boards of education — and when I say “board of education” I want to give the definition as it exists in the law today. It says, “The term

'board of education' shall include, by whatever name known, the governing body charged with the general control, management and responsibility of the schools of a union free school district or of a city." So that would include any body charged with the administration of schools, and as such as administrators of the schools, they control the schools as agents and as delegated bodies of the State, which is the central authority. They do not exercise their jurisdiction by virtue of being representatives solely of a community, a city or a county.

Now, they have wide powers, and it will be unnecessary to recite them here, but they can be found in the Education Law; one of which makes them almost supreme in solely educational matters. They already are corporate bodies existing independently of the municipality.

Mr J. G. Saxe—If all you put in the proposed amendment is that the city board shall be a corporation, it is perfectly possible for the Legislature to repeal all those powers.

Mr Shipman—Yes, sir, and that is why we wish to continue—the object of the amendment is to continue beyond peradventure the high standards of education in this State. The Empire State stands foremost among the states of this glorious Union. It has brought education to the highest pitch; and the reports of the Commissioner of Education of the United States have pointed out that New York has systematized, progressed and advanced in the matter of education beyond any other state, and we want to keep it there.

We do not wish it to be subject to politics, to changing conditions, and to the control of the different municipalities of this State or any division thereof. It is with that purpose that we present this proposed amendment, that we may make permanent those things which are found to be so excellent in our school system.

Mr Wagner—Is there not a change in politics in our State just as in our localities?

Mr Shipman—There may be, but there has not been a change in politics, no matter what party has been in power in the last twenty years, which has sought to radically change the school system or the school policies of this State. On the contrary, both parties have united in that view of the question. Again, it is said that the words "supervision and control" indicate wider discretion which goes with the State, but on the contrary we wish the same sort of control to go on. In other words, the amendment provides that the State shall continue its supervision and control. We know what that means. We would not know what other words mean. We have our courts and we also have a body of legislation, and we have the continued practice of the Education Department within the last twenty years. We are satisfied with that and we desire it to be perpetuated, and we desire it to be perpetuated beyond any cavil or dispute, so that the relative order of precedent, the relative power and authority of the various bodies which control education in this State may be exactly stated and defined. It is not that the State is to arrogate anything to itself, but it wishes to know beyond peradventure of doubt, in the case of a clash, or controversy, or difference of opinion, which is the superior. It already controls all of the schools of this State in a certain sense. It might be feared by some that the control would mean an invasion of the management, financial power or of teaching and matters



of that kind as conducted in the various private schools of this State; but, on the contrary, we are proud of our private schools, we are glad to see them flourish. All that we ask is that they, in regard to health, order and minimum of instruction, shall teach equal to the State, and that is the only control desired to be exercised in the measure in which it is exercised.

The State today in its labor law provides that a child of under fourteen years of age shall not be permitted to labor in factories unless it has had a minimum of education evidenced by a certificate from the schools and in this the State goes very broadly and provides that such a certificate shall be made, provides that a certificate shall be made by one of the teachers, or superiors of the schools, and shall state that the child has received over a stated period instruction in reading, writing, spelling, English grammar, geography, familiarity with the fundamental operations of arithmetic, up to and including fractions, and has completed the work required for the first six years of the elementary schools or the equivalent thereto, or private, parochial schools; and similar control is exercised in the truant school law, in which it provides that a child must go to school up to the time prescribed in the labor law, and it prescribes that such certificates shall be issued, made by the teacher, superintendent of public schools, or by the controlling authorities, or by the private and parochial schools, and the only control the State desires is that it shall see to it that the children in the various schools shall obtain education equivalent to the minimum prescribed by the education laws of the State of New York.

Mr Franchot — I should like to ask whether it is the intent of this provision to prohibit the Legislature from conferring the power on localities in respect to the management of schools?

Mr Shipman — It is not.

Mr Wagner — I want to apologize for asking all these questions, but I want to get the real meaning of this. The question which Delegate Franchot just asked is the very one that I want to be enlightened on. You say, in answer to his question, I understood you to say, that it was not desired by this proposal to take from the Legislature power to confer the administration to a locality, the administration of its school system. Now, is not it quite clear by looking at this proposed amendment to the constitution, that that is exactly what it does? Because you begin by saying that the State shall continue its supervision and control of the education of children, and I asked you a moment ago whether by "control" you meant the entire control, including financial administration, and your answer was that it did mean that. Now, that is all there is to the local administration; and in your next sentence you say that no powers in derogation thereof shall be conferred upon the local authorities. So that in the first sentence you propose to give the State absolute control over the entire administration, as well as supervision of the public schools, in any locality, and then, in the second sentence, you say that the Legislature is prohibited from passing any law in derogation of those powers. You certainly prohibit the Legislature from conferring upon any locality any part in the administration of its schools. That is the way I understand it. That is what derogation of power means, as I take it.

Mr Shipman — Will the gentleman consider for a moment the words in this amendment, carefully chosen — although I did not choose these particular



words—it says that no powers in derogation thereof shall be conferred on the local powers of any civil division. That does not say that all powers of delegation shall not be conferred by the State when it chooses to delegate power. The simple thing is that no law can be enacted which will set aside the State's control of the public schools. It may share its power with other boards and other authorities—share them to a limited extent, exactly as this body or any legislative body may confer them upon a committee. But as for abdicating its power and stepping out of control altogether, this amendment is to the contrary.

Mr Franchot—Are you not aware that if the Legislature should delegate the power, it would always have it in its power to take it back?

Mr Shipman—Maybe; but as long as it stood it would be abdicating state control.

Mr Franchot—If you do not mean that, it can not delegate it at all, what do you mean by this language?

Mr Shipman—That the State shall continue. Now we have an elaborate Education Law which covers some 500 pages and there are your boards of education in the various divisions of this Commonwealth expressly defined. They are carrying all their powers today under this law and have been for the last twenty years.

Mr J. G. Saxe—The difficulty which quite a number of us are having is that the language of this amendment is not exactly clear. In defining what you mean by “supervision and control” you have got to go to the Education Law and the rules in a dozen different places. What there is in the amendment is this: It says that something shall continue—supervision and control—making these constitutional words instead of in the common law, and when you look at the other amendment the only thing with reference to the local boards is that you make it a creature with powers to raise money and spend money but nothing at all on the general supervision of schools; and it seems to me that instead of exactly stating something the amendment does not exactly state anything, but it refers us to a big educational law and rules—

Mr Shipman—So does every section of the constitution. You are supposed to know the law and things of that kind when you commence on the constitution.

Mr Wagner—Perhaps I have not made myself clear. I do not find the fault that Delegate Saxe does. I know what “supervision and control” mean, but now you are using after that the words “derogation thereof,” “and no powers in derogation thereof shall be conferred upon the local authorities”—now if the State should have absolute financial legislation and the Legislature should pass an act delegating that power to a local authority, that is giving power in derogation of absolute state control.

Mr Shipman—No, it has the power to delegate. If the delegated authority is acting under power of attorney, it is simply the agent.

Mr Wagner—Then why do you put in the words “in derogation thereof?”

Mr Shipman—Simply that state control shall never be set aside; that it stands in the background, superior to any delegated power from time to time. In other words the power of the State over education in general shall never be abrogated, shall never be set aside. It may be delegated in part or

may be set aside or parted with, to a certain extent, to an attorney who acts always in the name of the principal. That is the theory on which the education of this State has been conducted for the past twenty years, and is the theory on which we propose to conduct it for the further time that this constitution goes into effect. It is for that reason we do not wish to disturb existing things but wish to continue them as they are continued today. So that they shall stand as a landmark so that future generations and people in control of the schools shall know the system clearly set forth in the constitution by which it is governed and arranged. That does not prevent the State at any time—because all state functions have to be carried on by individuals or bodies created for it, but it does prevent the State at any time from delegating or prescribing the duties of a certain corporation or agency under its control and it stands at all times above such agency and above such attorney to see that its delegated or prescribed powers are carefully preserved. Otherwise the State is powerless in the matter of education; it is left to the nondescript bodies of every community throughout the State to say what they shall do in the matter of education. That would be a catastrophe to happen in this State because we would have no central authority and no authority—as if a great army allowed each company to march according to its own step and perform such evolutions as it felt was right.

Now, as to the words “supervision and control,” on which I was interrupted by my friends, it seems to me to be the real idea not to interfere in any respect except that of decency, health and order with the numerous private institutions of learning throughout this State. We have never done so in the past and do not propose to do so for the future. In fact, the ideal system of education would seem to be where there can be competitive branches of education, that of the State carried on with its great facilities and available funds, and that of private institutions carried on so that we shall have a healthy competition between the two, so that anything in the matter of governing and educating youth may be brought forward to its fullest extent by continuing this system of making the State's schools better than ever before. And if in private schools we can educate better or educate even as well at a more considerable expense—that is one of the ideal systems to have in the State whereby the State can produce the best that is in it, and the private institutions can be spurred on to show that they are producing likewise the best, so that there is no reason that the state control should ever go farther than the general principle of producing results—healthy bodies, sane minds and adequate education.

Mr Clinton—In considering proposed amendments to the constitution, the question which arises first always is whether the proposed amendment introduces a change in the policy of the State in any direction; and if it does, whether that change is advisable in the interests of the people. If it does not do so, the question arises whether conditions are such that it is wise to reiterate or to give the people the opportunity to reiterate the powers of the State through a constitutional amendment. This amendment, as I read it, does not introduce a single radical change in our educational system. It is simply an announcement of the paramount control by the State over the policies which are to govern in education. If the delegates will read the present provision of the constitution which is to be amended, they will see that the



George Clinton, Sr



provision does not announce that paramount control at all. I have listened to questions put to the chairman of the committee and to Mr Shipman, as to the intent of the committee. We have nothing to do with the intent of the committee. It may be proper to put it on the record, so that if any legal question arises in the courts, the intent of a portion of the convention may aid the court in construing a doubtful question if it arises. I have listened to the questions put by Mr Wagner, and those questions are pertinent; those are the ones to be considered. That involves simply the question whether this amendment—there are two questions: first, whether this amendment is so worded that it goes farther than announcing what the courts and the people of this State have always regarded as the policy to be preserved, of the control of the State, not over the machinery of education, but over the policies which are to be imposed. I think Mr Wagner has done this convention a great service in asking the question. If there is any doubt about it upon this language, it should be amended. If there is no reasonable doubt on this language, it should stand, if we are willing to say, as I think we should say, that the people should have the opportunity of announcing whether the policy which has obtained in matters of education shall continue.

Now, I do not like to enter into a legal argument, but here, it seems to me, is the question. The first portion says—and it is very carefully worded—that, “The State shall continue.” It introduces no new idea. It shall continue the powers and the exercise of the powers which it now has. It shall continue, “its supervision and control of the education of children.” Now, the question, of course, arises at once whether the supervision and control of the education of children means that the State is to go into the private schools, parochial schools, the management of schools in cities and other localities, or whether it simply means what it says—“shall continue its supervision and control.” The word “supervision” does not indicate at all that the State is to go into these particulars and wrest from private institutions or from local control the power of absolute determination of what salaries shall be paid, how teachers shall be selected or any of those details. But when you come to the word “control,” there a question arises. You say, “control.” That brings us to this proposition: The State now has that control. Does this provision mean that the State shall exercise that control by the interference which I have suggested? It does not, to my mind. We proceed a little farther. The Legislature can do that now. We proceed a little farther and it says that “no powers in derogation thereof shall be conferred.” There the suggestion arises which Mr Wagner has presented, whether that language would prevent the Legislature from continuing the powers granted to localities or prevent it from legislating so far as private institutions are concerned, so as to confer any powers upon them. That is the question.

Mr Wagner—Control over them.

Mr Clinton—I have passed the word “control.”

Mr Wagner—I mean whether we can confer any control upon any local authority.

Mr Clinton—Yes; that arises under this clause, “in derogation.” It seems to me, Mr Chairman, that in view of the fact that this proposed amendment simply announces a continuance of the present policy of the State in educational matters and the powers of the Legislature now existing, no court would



say that it introduced a new principle which prevented the Legislature from continuing the policy which has been accepted as within its powers. If it did, if I had any idea that it did, I would not favor this amendment. It seems to me that it is too much of a refinement to say that this language curtails the powers of the Legislature. No court, looking at that and looking at the first line, it seems to me, could come to such a conclusion. "The State shall continue its supervision and control"—not that it shall be limited to its representatives in the Legislature in the exercise of the powers which it already has.

That brings me back to this simple question. It changes nothing. Is it for this convention, or is it not, in view of the conditions existing, in view of the confusion which continually arises in the Legislature when bills are introduced affecting schools—is it or is it not a proper thing for us to present to the people a clause which shall stand in the constitution as an announcement of the paramount power of the people, as represented in the Legislature, to supervise education? To me it seems that it is proper to do that; to me it seems that it will set at rest, one way or the other, when the people vote, the question whether the State shall have control of the policies to be pursued in the matter of education.

Now, Mr Chairman, I may be wrong in my construction. I have had some experience in law, and what I may say may be entitled to weight or not, on the question of law, but I desire to reiterate that, in my opinion, there is not a word in this proposed amendment which limits the powers of the Legislature, or which goes farther than to declare a policy of the State which, to my mind, is correct.

Mr Wagner—Just a question. Firstly, you say the State shall continue its supervision and control. Does that mean that the Legislature is prohibited from, in the future, conferring any greater power upon the state authorities of supervision and control than they at present control?

Mr Clinton—In my opinion as a lawyer, it does not limit the powers of the Legislature in that respect.

Mr Wagner—You continue the control now, don't you?

Mr Clinton—The control exists now.

Mr Wagner—Now, secondly—will the delegate yield for a second question? Suppose we adopted here an addition to this proposal, if this should be adopted—a proposal giving a limited amount of home rule to municipalities—and one of the powers which we conferred upon the local authorities is complete control over its finances in such a way that the Legislature is prohibited from interfering with their financial administration. Will that carry with it the financial control of its school system within that municipality?

Mr Clinton—I wish to say this, that I—and I believe with Senator Wagner and other members of this convention—and I say it without intending to cast any reflection upon the committee on cities—have been waiting with great anxiety to learn what they were going to formulate for us that would provide for home rule and not conflict with the sovereignty of the State. This does not conflict with home rule. If the report of that committee—and you and I, Senator Wagner, have got to watch it—to see that it is so worded that there can be no such question as you suggest as between the final action of this convention on home rule, and this provision. I do not



John C. Leggett

believe that this provision now would conflict. I do not believe now it would conflict, because there is no derogation of the powers of the State to supervise and control education as that power now exists, by giving to cities entire control over the expenditure of their money, whether it is for schools or anything else, but I beg you to join with us when the committee on cities reports and carefully scrutinize their language.

Mr Leggett — I do not know that I need to be ashamed to confess that my hold on the exact meaning of the intent and effect of the language employed in this proposal is rather slippery. It may, of course, be, and probably is, true that the committee having this language in charge, and the gentlemen who have advocated its adoption here have a close and firm grasp of its exact intent, meaning and effect, but I believe I do not violate any confidence in saying that they have not made it clear to quite a considerable number of us. Now, as I understand the matter, they tell us that the supervision and control of the State in this matter of the education of children is now complete and satisfactory; that this language is not intended to change that, and necessarily, without impugning their good faith, it seems that they mean us to understand that it would not change it. The question arises immediately in my mind, then, of what good is it if it does not change it? If the State now has plenary and complete control of education, what is the particular object of saying so? But are they quite sure that by no possibility this does not make any change in the existing law and in the existing control of the Legislature? I wonder if they are. It seems to me that it is plain that it does one of two things, that it does not change the power of the Legislature or that it does. Now, if it does not, it is frightfully nugatory. It does no good. The Legislature's control now is satisfactory. If it does change it, then in what respect does it change it?

It can not enlarge it, it must restrict it. Now, is not that so? And if it does restrict it, in what way does it restrict it and is it desirable to restrict the power of the Legislature?

Questions have been asked as to whether the Legislature under this would be prohibited from delegating to local municipalities further control of the matter of education in any respect, and I believe the answer has been made that it did not. If that is so, then what is the effect of that provision that "nothing shall be done in derogation?" If it may further extend local control in detail, what is the effect? It practically has none. There can be no question under the present condition of things that if the Legislature does delegate details of management to the local municipalities, or any kind of detail in administration, if they are found unwisely administered under that method, that it can withdraw them.

Now, I submit that it is incumbent upon the gentlemen advocating this amendment to point out to us that it does not interfere with the plenary control that the Legislature now has of educational matters. I, by somewhat painful experience, have come to know that when you get anything into the constitution, it is extremely difficult to get it out, and for that reason I am a little loath to vote anything into the constitution unless I can concretely understand what the effect of it is.

Mr Clearwater — The gentleman is entirely right in expressing a reluctance in voting any measure into the constitution of the State, unless he fully under-



stands it, and it was the effect and the hope of this committee in crystallizing in lucid and compressed phrase the present and past policy of the State regarding education, to frame an amendment to the constitution which could readily and easily be understood, not only by the distinguished delegates of this convention, but by every citizen of the State of ordinary intelligence. Regarding his rather uncomplimentary characterization of this amendment as "slippery," it would seem to me that it is the reverse of "slippery." I challenge the gentleman to phrase this idea expressed in this amendment in a more forceful, more illuminative, more expressive phraseology, or in words better adapted to express its meaning, than those selected by the distinguished chairman of the committee on education.

Now, sir, it is the policy of this convention, first, to remedy such evils as our past political history has shown to exist, if they are susceptible of amendment by constitutional provision; but a far worthier, far greater, far more important function of this convention, sir, is to frame a constitution that will provide for the probable needs and necessities of the people of the State of New York for the coming twenty years. The object of this amendment, as was stated by the chairman of the committee upon education, is to place in the constitution, beyond the reach of the Legislature, beyond the reach of these various communities of the State — which, in their aspirations for home rule, bid fair to set up a system of local self-government, unequalled, at least in this country — the object of this amendment, as I say, is to put into the constitution a provision regarding the education of the children of the State which would forever prevent the perversion or diminution of the present and past policy of the State of New York regarding the education of its children. When you consider conditions confronting us today; when you consider the remarkable growth of population in the State of New York due to foreign immigration, as compared with the development and growth of population in other states, you can readily see, sir, how it behooves the delegates to this convention, in so far as human vision and foresight can assist, to guard the future.

Let us see. During the last ten years Minnesota has grown 19 per cent in population; Kansas, 15 per cent; Wisconsin, 15 per cent; Nebraska, 12 per cent; Missouri, 6 per cent, and New York, 25 per cent; 31.3 per cent of the growth of the population in New York being entirely due to foreign immigration. We can not foretell, sir, what the future may bring forth, but framing the constitution today, framing it for the future, it behooves us to so guard the education of the young, that it never can be assailed by any sinister influence not familiar with our customs and traditions. In answer to Senator Saxe, who asked why — or who suggested to Mr Shipman that this amendment was ambiguous in its phraseology, that it did not decide, or did not express how the control should be exercised; let us see how much force there is in that.

"The State shall continue its supervision and control of the education of children as a state function, and no powers in derogation thereof shall be conferred upon the local authorities or any civil division thereof."

Now, what did the framers of the first constitution of this State, adopted at Kingston on the 20th of April, 1777; and what did the framers of the constitution of 1846 insert in the constitution?



A phrase equally vague, still vastly more important than this. Let me read to the gentlemen the second section of the constitution: "The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever." And the framers of that section of the constitution did not undertake to specify them. There are 1400 decisions of the Court of Appeals stating in what cases, in what character of cases, trial by jury may be had. It certainly would not permit of putting them into the constitution, and in the case of Wynehamer against the People, cited by the Court of Appeals in 13 N. Y., that court held that this phrase, this ambiguous phrase, preserved the right to trial by jury embraced in all cases where the right of trial by jury existed under the common law in England on the 20th day of April 1777, and that it embraced all cases wherein the right of trial by jury had been had by act of the Legislature, by constitutional provision or by judicial decision, down to the time of the adoption of the constitution of 1846.

Now, there is nothing vague, or elusive, and to use the word, the uncomplimentary adjective of my friend on my left, nothing "slippery" in this amendment. On the other hand, it would be difficult to find language more concise, more exact, more expressive of the idea intended to be expressed. The distinguished gentleman from New York, Senator Wagner, and my still more distinguished friend from Niagara county, Mr Franchot, seem disturbed somewhat as to the question of home rule.

Well, sir, if there be before this convention, or its committees, a tenuous, diaphanous, or—I certainly would not say "slippery" but elusive idea, it is this very idea of home rule, which, so far as I am able to ascertain, has never been able to approach anything like exactness of expression. There is no intent to interfere with the liberties of communities; neither is there any intent on the part of this convention to set up a number of principalities in the State of New York which will equal the Hanseatic league, because if we do, the Commonwealth will face the same conditions which existed under the Hanseatic league.

But, it has been the policy of the State from the beginning to treat the education of its young as a state function. Is there any more sacred duty devolving upon the present generation than that duty, and is there any more important duty devolving upon the delegates to this convention than to place the discharge of that duty and of that function beyond the peril of assault, and that is the object of this amendment.

Mr J. G. Saxe—I do not mean to take any decided position upon this amendment. I merely wish to suggest to the chairman of the committee and to Delegate Shipman, who were arguing in favor of it, that the wording might be made clearer. I understand that the amendment will not be pressed to a vote today, but in order to make it perfectly clear what I have in my mind, I am going to move the following amendment: That on print no. 749, line 3, after the word "its" there shall be inserted the word "present"; so the first line will read: "The State shall continue its present supervision and control," and that on lines 4, 5 and 6, there shall be stricken out the words "and no powers in derogation thereof shall be conferred upon the local authorities or any civil division thereof;" and I suggest that when print no. 757 is moved, that being the companion bill, we shall insert on line 5, after the words "every city shall have a board of education which shall be a body corporate and politic," the language "which shall continue its super-

vision and control of the education in such city subject to the present supervision and control of the State."

Mr Clearwater—Mr Chairman, I trust that so particular a grammarian as my friend will not insist upon his first amendment. It adds nothing to its force. It reads "continue its control," and to have it read "Continue its present control" would not add to its present force, and to insert the word "present" would be the addition of an unnecessary chronological expression.

Mr Wagner—I understand that this is not to be moved today, so I reserve whatever I want to say about it until another day, but I would like to ask the distinguished delegate, Judge Clearwater, a question: Assume that this proposal should be adopted, and also that the elusive home rule provision shall finally come to us, including a provision giving municipalities absolute control over their finances and expenditures and prohibiting the Legislature from interfering with it; would you say that the home rule provision would give to a municipality control over the expenditure and finances of the school system within that locality?

Mr Clearwater—I would only say, Senator, if you will permit me to reply in the language of Cæsar, when he was told by one of his generals that a certain bridge which they intended to cross in Helvetia would break through when they went upon it, he said, he would solve that question when he reached the bridge.

Mr Wagner—I am afraid that is not satisfactory, Mr Chairman, as an answer to those of us who are interested in New York City, and I think that those who are anxious to secure our votes on behalf of this proposal had better give us a more comforting answer than you have given us.

Mr Clearwater—Well, sir, the answer was not designed to be comforting; it was designed to be disconcerting. Of course it would be utterly impossible to tell what the cities committee may report and what the convention may adopt in regard to home rule. It is beyond a question, that if it is the desire of the convention to frame that amendment to the constitution, it shall provide that degree of home rule which is consistent with the dignity, prosperity and the rights of every community in the State. However, I may as well say this. I may as well say, Mr Chairman, now, and it may as well be understood by the delegates here: That during the many hearings before the committee on education, before which came not only the representatives of the city of New York, but the representatives of other great cities of the State, there was a distinct and avowed purpose by the municipal authorities to take control of the system of education in their respective municipalities.

Now, in so far as it is expressed in this proposed amendment, that education is a function of the State, we shall insist upon the amendment.

But, it is entirely possible for sensible men engaged upon a common purpose to agree upon such an amendment to the constitution, which shall give to every municipality in the State that degree of home rule to which it is entirely entitled, and yet absolutely reserve the functions of the State. It is the function of the State to take care of all of the state institutions. Does not the State look after all its state prisoners? Does not the State look after all its insane? Does not the State look after its dependents of all character? And so, should not the State look after the education of its children? Nor has there ever been a time in the State of New York, or in any other

state, when the State was willing to surrender, or should have surrendered a state function to any municipality, no matter how eager it was for home rule. And the difficulty is, Mr Chairman, and I say it diffidently, that in this new American idea, in this worship of the gods of efficiency, economy and home rule, there is some danger that in our enthusiasm, or shall I say hysteria, we shall be carried beyond the bounds of common sense.

Now, when the cities committee reports this bill, there can be no doubt in my mind that the convention will adopt such provision as will secure to municipalities a proper degree of home rule, but I sincerely question that it will adopt any constitutional provision which will be in conflict with the express purpose of the one which we are discussing, and if there be such a conflict, let me say with great precision of statement to my friend from New York, that I trust that what is expressed here will be the dominant provision adopted by the convention.

Mr Shipman—I think in order to clear up some of the confusion which seems to me to be apparent through the remarks of some of the gentlemen, that we should test these words in the second clause of the amendment by the converse, and we will see that it leaves a large latitude for action by the Legislature and by other bodies.

Now, take this: "And no powers in derogation thereof shall be conferred upon the local powers of any civil division." Take the converse of it: "and powers in conformity therewith may be conferred upon the local authorities of any civil division;" and you can see that they may have all the rational and reasonable powers that can be granted in the conduct of schools, but they can never set aside the permanency of the State in the management and control of school affairs.

Mr A. E. Smith—If I understand aright, no motion is to be made to move this bill today out of general orders. I would suggest to the committee on education and to the gentlemen that are conducting this proposition that between this day and the day when it is again up for discussion in general orders, that there be given to the convention some understanding of the meaning of the word "control" of the education of children. I think it is clear in the minds of a great many delegates just what supervision there is over the education of children. We know that the State Department of Education fixes a certain standard and that it does certain supervisory work. But, what control? I am, myself, unable to understand how far that control goes; and I would particularly for my own personal benefit, and probably for the benefit of more of the delegates, like to have explained how far that word "control" would go toward the management of interference, for the lack of a better word, by the State of private schools.

Mr Clearwater—It does not interfere at all.

Mr A. E. Smith—Now, I don't know. I am not sure. The Education Department now exercises some degree of supervision over private schools, but no control. Now, are we by the terms of this amendment extending the power of the State Education Department, so far as private schools are concerned?

Mr Wickersham—With respect to the exercise of the supervision, is there not necessarily a certain control. As, for example, suppose the inspector of the board of education, or the Department of Education, finds fault with the standards maintained by the schools; doesn't it also require conformity to the





Alfred E. Smith



standards established, and is not that control to a certain extent, and may not that be a part of the control as intended and as covered by the amendment?

Mr A. E. Smith—No, I think that supervision can only be brought to the point where it can be controlled, when the school is registered under the Regents and the graduates therefrom must secure a Regents certificate.

Now, what concerns me the most is to find out whether that control can be stretched to the point that the State would have the authority at any time to tell a private school the character of textbooks from which the children will study. That they have the right to do now, or may have the right to do, so far as the public schools are concerned.

Mr Wickersham—One of the proposed amendments by Delegate Saxe was to insert the word "present" before the word "supervision." I understood Delegate Schurman to say that the meaning which the committee attributed to the proposed amendment was present supervision, or present supervision and control at present enjoyed and exercised. Now, without knowing, because I am not as familiar with the state educational system as some others, this supervision and control as now exercised is what is intended to be perpetuated, as I understand, and nothing more.

Therefore, unless the supervision and control went beyond that which is at present enjoyed, would not the thought which you have expressed be inapplicable to the present proposal?

Mr A. E. Smith—Well, that may be true. No doubt that improves that from my point of view. I can see that. But unlike Cæsar, in order that we may be sure of the stability of the bridge before we get to it, so that another route may be taken, to prevent us from marching up to the bridge and being compelled to march back again, I would like to have the committee consider writing in the amendment this definition of the word "control," or this limitation upon the word "control": "Such control shall not mean the internal management of finances or the direction of private schools."

Mr Wagner—I might suggest that while that takes care of the private schools, but why a specific provision of that kind? Does not it mean that you lodge in the State the absolute control of the finances of the public schools as distinguished by this specification, and does not it further mean that you exclude everybody else?

Mr A. E. Smith—Mr Chairman, I am afraid that the reference to Cæsar and the bridge will have to be applied to the Senator's argument. I would like to see the home rule bill first.

Mr Clearwater—That is the common ambition of all of us.

Mr Wickersham—I move that the further discussion of this measure be suspended and that when the committee rise it report progress on this measure and ask leave to sit again, and request that the amendment offered by Mr Saxe be printed for the information of the committee of the whole when it next resumes consideration of the measure.

The record of July 29th shows that the committee on education announced that an executive session of that committee would be held immediately after the adjournment of the convention on that day.

On August 3d the debate on amendment no. 749 by the committee on education was resumed as follows (Record, p. 1065):

Mr Blauvelt—Mr Chairman, I was unavoidably absent during the early debates in the committee of the whole on this proposed amendment, and so what I have to say on the subject may be somewhat of a repetition of what has already been said in the committee of the whole. A consideration of this amendment necessarily involves consideration of amendment no. 757, also introduced by the committee on education. The two are companion measures and must be read together in order to properly understand the scope of the committee's report on the subject of education. Amendment no. 749: By that amendment it is proposed to state specifically in the constitution that the supervision and control of the education of children is a state function and that schools, wherever located, are state institutions and not local institutions. Amendment no. 757 provides for the incorporation of local boards of education to act as agents of the State in the administration of school affairs in their respective communities. While it has been the educational policy of the State for more than a century to provide for the general direction and control of its schools, and the education of its children, a policy which has been repeatedly upheld by the courts, no provision has ever been written into the fundamental law that education is an inalienable, sovereign duty of the State. That is the purpose of these two amendments. The constitution of 1777 is silent on the subject of education. So are the constitutions of 1821 and 1846, with the exception of the provisions in each relating to educational funds. During these three constitutional periods, however, the Legislature gave much serious thought to the matter, and many statutes were passed initiating and developing the educational policies of the State, the most notable of all being the act of 1812 which laid the broad foundation upon which our system of state education has been constructed. Numerous other statutes were passed, each having its place in the gradual evolution of the system. The courts, from time to time, have construed these statutes and they have consistently held that while the local officers might administer the system they did so under powers delegated to them by the Legislature, and as agents of the State.

We now come to the constitution of 1894 and to the work of that convention. The committee on education reported to the convention the present educational article containing four sections. The third section relating to school funds was continued from the former constitutions without change. The other three sections were new and introduced new principles into our organic law.

In urging the adoption of this article the committee concisely stated the educational system and the situation at that time. The committee stated:

"The present constitution"—that was of 1846—"is silent upon the vital point of the establishment and maintenance of free common schools. It may be urged that no imagination can picture this State refusing to provide education for its children and for this reason, the declaration which your committee here reported in section 1 might, no doubt, be omitted without endangering the stability of our present educational system. But the same reasoning would apply to many other matters, though fundamental, and it is a significant fact that within the last half century of constitutional revision,

in other states of the Union, no other state has considered it superfluous or unwise to make such an affirmation in its fundamental law. Your committee, therefore, now recommends the adoption of section 1 as an explicit direction to the Legislature to provide for a system of free common schools wherein all the children of this State may be educated. This requires not merely schools, but a system, and not merely that they shall be common, but free, and not only that they shall be numerous, but that they shall be sufficient in number so that all the children of the State may, unless otherwise provided for, receive in them their education."

The convention adopted the report of the committee and incorporated in the constitution the existing article on education. Section 1 of that article reads: "The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of the State may be educated."

This section has been construed to mean that all schools supported by taxation are a part of the common school system of the State and subject to the supervision and control of the State, acting either directly through state officers or indirectly through local officers, as agents of the State.

Why then, it may be asked, is it necessary to write into the constitution, in express terms, a provision that "education is a state function," and that no power in derogation thereof may be conferred by the Legislature upon the local authorities or any of its civil divisions?

My answer is twofold. In the first place, when a governmental policy has become settled and fixed, it should be defined in the organic law in unmistakable terms.

In the second place, the question as to whether or not the Legislature may grant to local authorities powers in derogation of the fixed educational policy of the State remains unsettled. Unfortunately it has been quite generally the custom to incorporate in city charters laws controlling the local government of the school systems in the different cities of the State. This custom has in many cases caused municipal officers and local political organizations to regard schools as purely municipal affairs. Then, too, the fact that the law is in the charter presents the temptation to modify such law for political and personal reasons whenever a city charter comes before the Legislature for general consideration. This is fundamentally wrong and the adoption of these two amendments would settle the disputed question for all time and in no sense would their adoption change what is now the fixed policy of the State in matters pertaining to our educational system.

It is not sought by either of these two amendments to take away from the boards of education any of the powers they now possess. On the contrary, by making them constitutional agents of the State, their powers would be more firmly established. Nor is it intended to increase in the Board of Regents or the Department of Education their present powers of supervision and control over local school systems. The Department of Education now exercises by statute general supervision and control over the education system in the city of New York, as well as over the systems in other municipalities and subdivisions of the State. Should the board of education of the city of New York refuse or neglect to maintain the schools of that city according to the standards fixed by the Department of Education, and should the board of



estimate and apportionment fail to make appropriations for educational purposes in the city of New York, power is now vested in the Department of Education to take control of school matters in that city as elsewhere and see to it that the laws are enforced and that the children receive the educational advantages accorded to them by the present constitution. That is what is meant by the term, "Education is a state function."

Mr Justice O'Brien, in the Gunnison case, frequently cited, said, referring to the city of New York: "The city can not rent, build or buy a school-house; it can not employ or discharge a teacher and has no power to contract with teachers with respect to their compensation. There is no contract or official relation, expressed or implied, between the teachers and the city. All this results from the settled policy of the State from the early days to divorce the business of public education from all other municipal interests or business, and to take charge of it as a peculiar and separate function through agents of its own selection, and immediately subject and responsive to its own control. To this end it is enacted in the general laws of the State that all school trustees and boards of education shall be corporations with corporate powers, which of course includes the power to sue and be sued in all matters relating to the control and management of the schools."

I apprehend that the opposition, if there is opposition, to these measures comes from either one of two sources; first, from certain cities in which there is still a strong feeling, in official circles, at least, that municipal officers should control the school budget and the expenditures and thereby determine the appointment, tenure and the salaries of teachers, a power which if granted would be manifestly contrary to the settled policy of the State. It would also be contrary to the laws relating to the appropriation and application of school moneys in all the rural school districts in the State, in all its incorporated villages and in thirty-nine of the cities of the State. It has been well said that a board of education can not give intelligent supervision to either the business or professional management of the schools if the amount of funds provided for their support and maintenance is to be determined by some other authority possessing no official relation or responsibility to the management of schools.

Second, from those who foresee a possible limitation of the educational work of private and sectarian schools. Under the compulsory education law the Department of Education now exercises limited supervision and control over such schools. Between certain ages all children must attend either the public schools or private or sectarian schools maintaining satisfactory standards, and to the extent of determining whether or not private and sectarian schools maintain proper standards, the Department of Education now exercises supervision and control. It is not sought by either of these amendments to increase that power.

Summing the whole matter up, that which is proposed by these amendments is to write into the constitution what is now the settled policy of the State in matters pertaining to education—that public education is a subject under the control and supervision of the State and must be administered in every city of the State through a board of education, created a body politic, which shall have power to determine the amount, and direct and control the expenditure of all school moneys. Subject to these limitations the Legislature will continue to have the same powers which it now possesses pertaining to



administration and to the general control and administration of school affairs throughout the State.

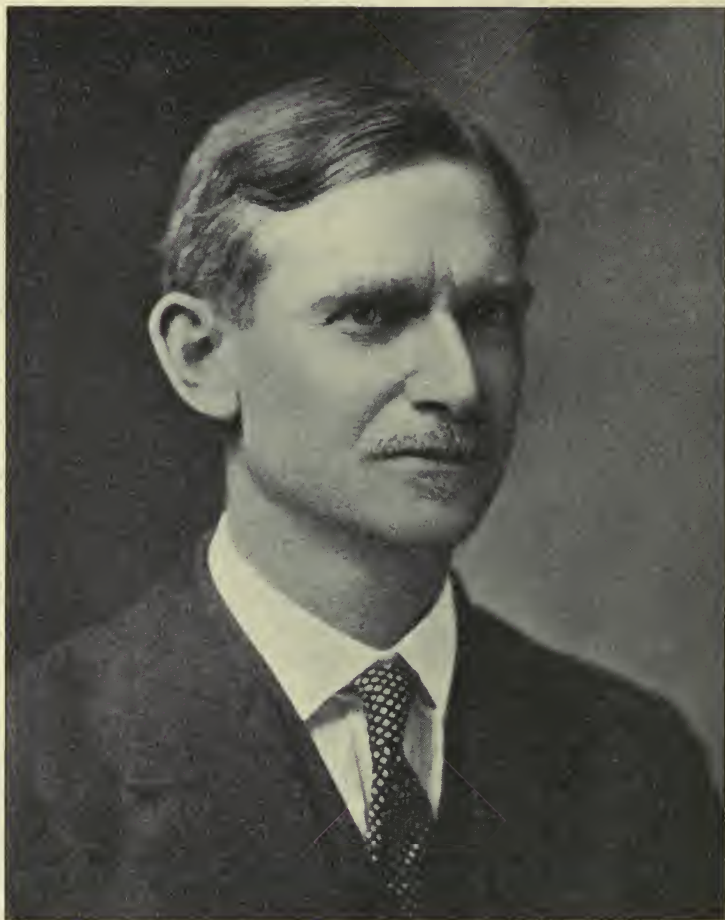
As I have stated, the real purpose of these two amendments is to place in the constitution the precise policy of the State now on the question of education, and I say that the time has come to settle the disputed question as to whether or not the Legislature can surrender to any political subdivision of the State powers which are contrary to that settled policy, and the very purpose of these amendments is to settle that question for all time, so that every child will have the same benefits of education, no matter in what part of the State these children may attend school.

I sincerely hope that both of these amendments, if not in the precise language that they are in here, that both of these amendments may be adopted. We have had experience here in the Legislature with the proposition advanced in the first amendment, and I feel strongly on the subject, that it should be written into the constitution in unmistakable terms that education is a state function.

Mr Bockes—Mr Chairman, I am opposed to this proposal, upon the ground that it appears to me to increase the centralization of power in Albany which already is excessive under the statutory law which this proposal would seem to sort of recommend as a constitutional statement.

Now for ninety-six years it has been found adequate to have a provision in the constitution providing for a fund, the proceeds of which should go inviolably for the support of the common schools, and the present language seems to me to be far-reaching and excellent in its scheme: "The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of this State may be educated." Now it is proposed to make a constitutional enactment which as it appears to me would write into the constitution the present imperfect statutory educational law. That law is very imperfect, and I know of no law in my section of the State that creates so much dissatisfaction as this very centralized educational law. We have in my county of Otsego farm after farm that has been reduced in value on account of its distance from schools since this present scheme of consolidation went into effect. The district has been compelled against the wishes of the majority of the taxpayers to send their children away from home, to be gone all day long, not to come back until night, and when this happens contrary to the wishes of a large majority of the taxpayers, it has a tendency to make the people generally dissatisfied with the administration of government.

Now let me illustrate: In the town of Hartwick, Otsego county, in district no. 14, there are thirteen scholars. Every resident of that district to a man is anxious to maintain for that district and for the children of that district their own schoolhouse and their own teacher. Instead of that this centralizing power here steps in and says, "No, you must take your children over to the heart of the village, two and three miles away." The result is that these children do not have the benefit of walking on their little legs to school as Andrew S. Draper did when he was a boy in Otsego county, but are carted off to school and are away all through the noon hour learning the tricks of the village children and are taken away an hour or two more than they used to be and the farm values in that village are reduced at least 10 per cent on account of the distance from school.



George L. Bockes

I had a letter just the other day which did not relate to this subject directly, but mentioned this evil as illustration, in which the author asked me to oppose any effort to reduce the powers of our local tax assessors and in his argument he says: "I am a firm believer in home rule for the country in educational matters. Our local needs and authorities are wholly absorbed by the powers of the centralized department." And he puts in some quotation marks around the word "department," inasmuch as he suggests the cuss words which the farmers apply to it when they speak of it orally, and often disregard it.

"Our roads are worked out on paper plans and schemes at Albany, by engineers who never saw the ground or know any local conditions. The business of our board of supervisors is dictated and controlled at the Capitol largely and becoming more so. I am citing these instances to show that the tendencies of these times seem to gravitate to a too strongly centralized power. I believe the country people are competent to solve their own problems and manage their own business in ways which agree with our local needs and requirements. If not in so uniform a manner throughout the State, it will be done all the more in harmony with justice."

That is not a single letter. It is a sample of the ordinary conversation of the grangers and the farmers in my section of the State, and this Education Department is one of the chief offenders in interrupting the natural activity of the taxpayers in local affairs.

Now, if this proposal is a necessity for the sake of preventing New York City from walking away with some powers which properly belong to the State, I wish to be shown that reason, and I will be willing to vote for it, but when you undertake to make what seems to me a direct attack upon the district schools, respected as they have been by the people in the country, it seems to me you are insulting the agricultural portion of the population.

There is another thing which offends me, although it is probably of no significance; striking out the word "this" and putting in the word "the," to my mind looked as if the Education Department were so earnest and eager to make some improvement that they felt as though they must do something just for the sake of doing something.

Now, what is the improvement in striking out the word "this" and putting in the word "the" in the last line?

The only effect of it is to emphasize the centralized power in the State. There is a personal appeal in the language and no one should change the mandate of those grand old words: "The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated."

Mr Schurman—I want to say that the Education Department has no responsibility for this proposed amendment. I want to add with reference to the change from "this State" to "the State" that it was made by the committee on education because "the State" seemed to be the way in which the phrase occurred elsewhere in the constitution.

Will Judge Brenner take the chair?

Mr Bockes—Mr Chairman, I did not intend to criticise the statutory Education Law in its general scheme. That law was intended for a good purpose, and if you would leave it with the same freedom that it has now, to be modified and put into shape by experience and by legislative enact-



ment, I think the present law, in spite of its inequities, will accomplish great good in the long run, because there are thousands of districts in the State of New York which need this very consolidation and want it. What I meant to say was that this constitutional proposal would seem to head off that freedom on the part of the Legislature in whipping the statutory law into shape.

Mr E. N. Smith—I speak on this subject with a great deal of diffidence, because I hesitate to disagree with the expression of opinion made by the committee on education. My remarks will necessarily have to be brief, however, because my attendance is desired at the present moment upon the meeting of the cities committee. It seems to me that the questions raised by these two proposals—and they must be read together, are questions that should be considered in the light of our full educational system, because it must be admitted that these two amendments, if adopted, will radically affect that system. My objections to this bill, general order no. 22, are as to its form, its effect and the reasons offered for the proposal. What does education depend upon in this State? Upon constitutional enactment? From the history of the government down to 1894 there was no constitutional provision upon the subject of education in this State. Education in this country is an institution which rests upon grounds which are stronger than mere constitutional enactment. It is an institution which lies at the very base of our civilization, essential for the preservation of our life as a republic.

Now what is the reason—in the consideration of a question like this we must consider what is the reason for public education. Why is it possible for you to come over to me and say that I must contribute to the education of your children, or vice versa? What ground is there for the taking of your money for the education of my children? To what extent can we go? For what purpose can the money be taken in education? Now, it seems to me the answer is obvious, that to the extent that education is essential for the qualification of our people for the duties of citizenship to the extent that education in that regard may be general among all children, to that extent and for that purpose may the State tax its citizens for the education of all its children. It was evidently that view which prompted the provision adopted in the constitution of 1894, which says, "The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated."

It is said that this proposal is but a declaration of the present law, a recognition in the constitution of the law as it exists. I said that my objections were as to form, as to effect, and as to the reasons proposed for the proposal. The proposal is, "The State shall continue its supervision and control—." What is that supervision and control? What is the definition of it? Is it the supervision and control that is in the statutes today? If so, then there are 200 pages of Consolidated Laws that you are reading into the constitution, for the educational system of the State is worked out through so many pages.

If that is the meaning, then certainly there are numerous provisions in the educational laws which ought to be subject at all times to change in modification according to the changing conditions of the times. In other words, "supervision and control," those terms are uncertain and indefinite expressions. The next sentence as to education, "supervision and control of the education of the children."





Edward N. Smith

What education? The education we have been giving in common schools? The education we are giving in high schools? The education we are giving in colleges and universities?

There is no limitation. "Supervision and control of the education of children." Not the education of "all children," but of "children." So that it is not limited to that common spread of education over and throughout the whole State and for all the children of the State.

As to the effect of this legislation. If it incorporates the present law as a part of the supervision and control, no man who is acquainted with the educational system of the State wants any such provisions as are contained in the laws frozen into the constitution from this time on, so that they can not be changed.

If it means that the State shall interfere with the locality, and shall centralize all power in Albany over education, as to all forms of it, then certainly you are striking right at the root of that important factor in education of local pride which every community has in it.

Now, the reasons that are urged for this—the anticipation of home rule for cities. Something is looming up, it would seem to appear, which might interfere with the State's control over all education due to the action of the cities committee. If that is the reason, then I say we had better wait before we put any provision in the constitution, or adopt it in this committee, until after the cities committee has handed in its report.

If the effect of home rule ideas is to concentrate everything of state concern in Albany, or if it means the concentrating of control of education, of health, of charity—of all those things in which the State operates concurrently with the municipality, then, indeed, the effect of home rule would be, not home rule, but to destroy that home rule as to state affairs of local interest which we now possess.

I shall detain the committee no longer, but in order to carry out the suggestions which I had in mind I would offer the following substitute:

Strike out the words in italics in general order no. 22 down to the words "the Legislature" in no. 22, and after the word "educate" add the following: "The State shall take care that all the children thereof are educated according to the standard now or hereafter prescribed by it for such common schools or according to a substantial equivalent thereof and shall forever have the supervision and control over education deemed by it necessary to accomplish such a result."

I offer this and move its adoption and, if I am making the proper motion, I move that the motion lie upon the table until the matter comes up for final action before the committee.

The effect of this amendment is to confine the jurisdiction to that supervision and control over those matters in education which are common to all the children of the State. This is a constitutional provision. It is not a limitation upon the powers of the State Department of Education as they now exist, but is supplementary to the present provision of the constitution, to wit: "the Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of the State may be educated," and second: the new part, that the State shall take care that all the children of the State acquire such a common school education.

Mr Marshall—Mr Chairman, this is a subject which necessarily interests all of us greatly, and it is very important that we shall therefore carefully consider the proposals that have been made, both by the committee and by those who have sought to amend the proposition which is now occupying our attention.

I think that there is much misunderstanding and unnecessary misunderstanding as to the effect and meaning of some of the words which are employed in this section as proposed. Nobody is more anxious than I am that the right of the citizen to educate his children in such manner as he desires shall be protected. I should, to the utmost of my power, protest against any attempt to prohibit the education of children in private schools or in parochial schools or any other proper institutions of learning, and I do not believe that those who have framed this provision have had any thought of depriving any citizen of that liberty. If such a purpose exists it must be found in the language employed, and I think that it would be scrutinized in vain to find within the four corners of this provision the slightest indication of a purpose hostile to the right of private education or education in parochial schools. The language is plain and simple. It is not intended to be revolutionary. It indicates the desire to be declaratory of a principle and not, as my friend from Watertown seems to think, freezing into the constitution any particular method or manner of carrying out the powers or exercising the functions which are declared to constitute an existing duty on the part of the State.

"The State shall continue its supervision and control of the education of children as a state function." The State now exercises the supervision and control of the education of the children of the State and it is a state function, and what is sought to be done here is to emphasize the idea that such supervision and control of the education of the children of the State is a state function, is a duty of the State, is an obligation on its part to the children of the State. Now the word "control" has given some concern to a number of the gentlemen who have discussed the subject but there can be no doubt as to its meaning. I examined the Century Dictionary last evening and I find that the word "control" is there described as being "The power of direction or guidance," and here the supervision and guidance of the education of children is a state function. Certainly there must be some superior power or authority with respect to so important a subject. It is unthinkable that education shall be permitted or shall go on without a head, without direction, without guidance; that every community can deal with that all-important subject according to its own methods or its own ideas—grant education or prohibit education or neglect education—without some supervisory power over it and without the exercise of guidance over it by the superior power of the State. A state function is a state obligation, a state duty, a state right. In the same way we have other state functions which must not be surrendered by the State and which must be observed by the State: The maintenance of the police power is a state function. We would not consider it at all practical or advisable or right or just that the city of New York should exercise one kind of police power and the city of Buffalo another, and have one rule of criminal law and one rule of criminal procedure in one part of the State and an entirely different one in another part of the State. And so the protection of public health is a state function. The administration of justice is a state function. The care of dependents and defectives is a state func-



tion, and that must reside in the State as a state function. But although these functions are vested in the State in carrying them out, in exercising them, it is necessary that the State shall act as the agency. That has been very clearly pointed out by Mr Blauvelt in his admirable speech this morning.

These localities—the local divisions of the State, the civil divisions of the State may be the arms of the State, the hands of the State, for the purpose of carrying out and exercising that function. But what we are now considering is not the particular method or manner of exercising the function, but the idea of imposing upon the State and of declaring in this constitution that it is a state function, to say now that there shall be supervision and control by the State of the education of the children of the State.

Now it is proposed by Senator Saxe to amend this provision, which I have just read, by inserting after the word “its” the word “present,” so that the clause would read, “The State shall continue its present supervision and control of the education of children as a state function.”

I should consider that amendment as most unfortunate. I would consider that as depriving the provision of all elasticity of accomplishing what Mr Smith of Watertown so much deplored in his address a few moments ago, the fact that you would write into the constitution the 200 laws, or pages of law, relating to the subject of education.

What may be desirable today as a method of supervision and control may not be desirable tomorrow. It is not a particular method of supervision or control that is desired. It is simply the idea of a general supervision and control that is important.

Mr J. G. Saxe—Do you want to be understood as disagreeing with the members of the committee who have spoken and who object to the word “present” simply on the ground of tautology?

Mr Marshall—I think that it is tautological, because you use it in connection with the word “continue;” but I think the greatest objection to the word “present” is that you are defining what that supervision and control is, or attempting to define what kind of a supervision and control there shall be. It is the present supervision and control, which means not the past or the future supervision and control. That is where the danger lurks in the constitution.

Mr J. G. Saxe—This is important, inasmuch as it applies to my amendment. The objection has been made that it is tautological, and now I want to know if you agree with me, and not with the committee.

Mr Marshall—There is something more important than tautology, or lack of tautology, and there is danger in putting in words which are apt to have residing in them the potentiality of mischief, and I think, therefore, if you use the words, or say, “the present supervision and control,” you are placing a rigid term in the constitution which would do the very thing that you of all men, I think, are seeking to prevent.

Mr Tuck—Do I understand, then, that the control may be increased, if it is not fixed?

Mr Marshall—There can be no increase of control, speaking accurately. The control is a condition. Supervision and control are two thoughts, two acts. You speak of the power of direction or of guidance, and it is well to leave it in that form.



When you begin to modify—to qualify—then you begin to give too precise a definition to the power, and in that way are making an error. For instance, if we said, "The control exercised by the State with regard to education, as exercised on January 1, 1915," you are saying that it shall be just that kind of control, that method of the exercise of control which was practised on that day; whereas, if you say, "the control" it does not bind you to any particular method of control, but enables you to exercise that control by other methods, more modern, or more sane, or more effective than those that were practised on the 1st of January 1915.

Mr Tuck—So that, concretely, if at the present time control as to education means merely determining by result, by examination; say, could that be modified in determining how instruction should be carried on in the schools by means of any kind?

Mr Marshall—Let me explain my ideas perhaps more at length than by a categorical answer to the question. A supervision and control of the schools as a state function necessarily includes the power of fixing certain requirements in the schools.

Suppose today in the exercise of the function of education, by law you say that it is sufficient to teach the three R's in the schools, and nothing more is required. That, today, would be the method of exercising the power of control over the public schools, and the supervision of the schools, and would be one method of exercising the state function.

But suppose tomorrow it is decided that in addition to the three R's it would be necessary to teach some other subject, to teach the subject of hygiene, teach the subject of more detailed study of geography, to teach civics; that would be within the power of the State under this general provision.

So, also, it might be today said that in our schools you might teach in any language that you please; but suppose it should be decided to be for the best interests of the State that some education in English, in the English language, should be required in the public schools; that power would reside in the State in connection with this right of supervision and control.

It is only in that respect that there may be changes. But that power of supervision and control of education must necessarily reside in the State, as affecting all children of the State. It is not important that that instruction shall be given in one school or in another but that in some school there shall be some compliance with the state requirements as to what shall constitute a proper education of the children of the State.

Now I heard a number of years ago—I happened to be chairman of the Commission on Immigration in this State—and I discovered that there were certain schools which were conducted by people who came from foreign countries and in which there was not one word of English taught, and in which the children grew up without any knowledge of English even though they were children born in this country. It was also found that there were certain schools in which hygienic conditions were atrocious and where the lives of the children were being threatened. Now certainly it is within the power of the State and it is within the duty of the State in the exercise of its functions to see to it, at any rate, that certain fundamental requirements of education should be complied with in all schools, as, for instance, that instruction shall be in part at least in the English language or that there shall be certain subjects which shall be taught in the schools or that the schools shall be con-

ducted under proper hygienic conditions. That is the only limitation—that is the essential part of this provision and in that sense I should say that it would be most unfortunate to put the word “present” into the constitution.

Now it is also important to have this function reside in the State in order to make it possible to have proper standardization, in order to carry out the policy of the State that there shall be compulsory attendance of the children in the schools. That is a state duty and a state function which can not be properly carried out unless there is some supervisory power and control in the State which shall make it possible to carry out the policy of compulsory education. Undoubtedly in carrying out that purpose, in carrying out that policy, the local authorities must be called upon to assist. Nobody for a moment believes it conceivable that we shall do away with our local school boards, with our boards of trustees, or whatever bodies there may be that carry out the general policy of the State in conjunction with its supervision and control.

Now, the next proposition that has received criticism has been the clause following the one which I have just read, which is to be found in the words “and no powers in derogation thereof”—that is in derogation of the state function, the function exercised by the State—“no powers in derogation thereof shall be conferred upon the local authorities of any civil division thereof.” The word “derogation” has been made the subject of some criticism. Now what is the meaning of the word “derogation?” It is defined to be “A limitation as to extent or restraint as to operation; the act of impairing the effect of any right or power in whole or in part.” Now, that being thus defined, I certainly see nothing to criticize in that phrase. The fundamental proposition is that the State shall continue its supervision and control of the education of the children as a state function, and then comes this further emphatic declaration as a categorical negative, “and no powers in derogation thereof shall be conferred upon the local authorities of any civil division thereof.” That is, the superiority of the State, its power of direction and guidance, shall not be cut down, shall not be whittled away, shall not be made to disappear, shall not be surrendered in consequence of any powers that may be conferred upon any local authorities of any civil division of the State. In other words, the State in matters of education is supreme in the exercise of its functions. The local bodies are agencies of the State, subordinate to the State. There shall be no grant of power to them which will in any way militate against the exercise of that superiority of power and authority of direction and guidance which is lodged in the State.

That is made very clear in the accompanying measure which has been proposed by the committee and which is also upon our calendar today, and which might as well be disposed of today as at any other time, which recognizes the right of the Legislature to create boards of education and to bestow upon them certain powers in connection with our school system. That has been read several times but it is useful in this connection to read it again. “Every city shall have a board of education. It shall be a body politic and corporate. It shall, subject to general laws, determine the amount and direct and control the expenditure of all funds to be used for public education within its jurisdiction. Such funds as are raised by local taxation shall be raised in the same manner as the general city taxes, but shall be levied and



Louis Marshall



the amounts extended on the roll as a separate school tax." That clearly indicates the idea that there shall be exercised by the locality these powers, subject to the sovereign power of the State. The State is the head. The localities are the arms. They are the methods by which the State exercises its functions, but the State at all times is there to guide and direct.

Now, Mr E. N. Smith's proposed substitute, which he has just read, which I have had no chance to very carefully scan, does not seem to me at all desirable, or in any way an improvement upon the provision which has been reported. "The State shall take care"—he first repeats the clause in the present constitution which was added in 1894, and which, by the way, is a guide to the purpose and intention of the framers of this provision. "The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated." That, read in connection with what goes before, is a mere indication that the State not only exercises this function of education, but insists upon the Legislature making provisions in free public schools, common schools, for the education of the children of the State, so that if the parents do not choose to educate their own children at home or in private schools or in parochial schools or by some other method, the State must exercise that function by providing the free schools at its own cost, at its own expense, at which any of the children of the State may attend.

Mr Quigg—Does not the language in the last line forbid the thought that there is any interference with private education as the parents of a child may desire where it says that "The Legislature shall provide a system of free common schools, wherein all the children of this State may be educated?"

Mr Marshall—Not "shall" but "may" educate. I am entirely in accord with what Mr Quigg says.

Mr Griffin—Is it not a fact that print no. 757, general order no. 34, to which you have just referred as a companion bill, and which might be disposed of today, is a proposal that relates wholly and solely to the financial administration of the schools?

Mr Marshall—In part it is, but it begins with the provision that "Every city shall have a board of education. It shall be a body politic and corporate. It shall, subject to general laws, determine the amount and direct and control the expenditure of all funds to be used for public education within its jurisdiction." That indicates, of course, a recognition by the framers of this provision that the localities are not to be deprived of the exercise of some powers in connection with the subject of education, the only qualification being that of the superiority of authority on the part of the State.

Mr Griffin—But does not the subsequent provision of this section clearly indicate the purport and extent of the entire amendment, namely, the financial administration of educational matters?

Mr Marshall—It does not act as a limitation in any way. Its general purpose is to create a method whereby funds may be collected in the various localities for carrying out the general educational purpose of the State as defined in the clause which we are now considering and as carried out by means of the agencies provided in the different localities. Boards of education are well defined in meaning—that phrase is. Every city has a board of education, every village has a board of education or its equivalent, and even in the smaller communities there is that which stands for a board of education.



Mr Reeves — I would like to ask this question more by way of emphasis than because I doubt the answer because I think I will agree with Mr Marshall in the answer, but can you find, Mr Marshall, in either of these proposed amendments offered by the committee on education anything that will restrict or limit the private or parochial schools any more than they are limited or restricted at the present time?

Mr Marshall — Not a word.

Mr Reeves — Neither can I and I wanted to emphasize it.

Mr Marshall — I am very much obliged to you for having made that suggestion because it is absolutely a conclusive answer to any fear that anybody may entertain on that subject, and I may say that I read this provision with great care for the very purpose of discovering, if possible, looking within its language, anything which might affect private or parochial schools, because if there is one thing that I am most insistent upon it is that there shall be nothing done that shall in the slightest degree deprive a citizen of his absolute independence not only in matters of education, speaking generally, but more important than all, in matters of religious belief.

Now Mr E. N. Smith's proposal is, that "The State shall take care that all the children thereof are educated according to the standard now or hereafter prescribed by it for such common schools, or according to a substantial equivalent thereof, and shall forever have the supervision and control over education deemed by it necessary to accomplish such results." Now I should consider that language as, to use a very picturesque phrase of Mr Smith, "freezing" into the constitution that which we now have. He is accomplishing the very thing which he does not want to accomplish, and which nobody ought to desire to accomplish, in this constitution, and then he finally closes by saying "and shall forever have the supervision and control over education deemed by it necessary to accomplish such result." It not only gives that power of supervision and control now, but forever makes it dependent upon the unfettered discretion of the State. "Supervision and control over education deemed by it necessary to accomplish such result"—that language is infinitely more all-embracing and grants much greater and more unlimited powers than is suggested in this provision which has been recommended by the committee.

Now I have thus far spoken in defense of this provision, as it is framed, which I think is entirely satisfactory. It recognizes the great general principles which we should not lose sight of, it recognizes the state function as a superior function. It is a duty of the State which it must—to the performance of which it must give heed. It must not permit schools to be starved. It must see to it that there is a proper system of education, but, as I have already said several times, this does not prevent the granting of power to local authorities, which are in aid, development and effectuation of this greater power, this supervisory power of the State. Now I confess, however, that although this language, in my judgment, is entirely satisfactory, protects every possible interest, is free from all just criticism; it is perhaps more wordy, uses more words to express the idea, than is necessary. I think it is not an improvement, so far as phraseology is concerned, upon the language which President Schurman proposed when he offered as an amendment to the constitution print no. 525 which was phrased as follows, in simple,

direct language, which is elastic and at the same time free from any possibility of misunderstanding: "The supervision and control of the education of the children of this State shall remain the duty and function of the State and shall never be surrendered," is vigorous, terse language. It means all that this present language does. It has more of the ring of the old-fashioned constitution which we admire. The language is language which can sink into our souls easier than this more modern phraseology which has been adopted. I am entirely satisfied with either. If I had my own preference to guide me, I should unhesitatingly adopt the language President Schurman originally introduced, and which in my judgment can not be improved upon.

Mr Griffin—Mr Chairman, I want to make a confession of faith. First of all, I believe in the supremacy of the State in matters of education. I believe in the public school. I am a graduate of the public schools of the city of New York, and I would not want to see them restrained or restricted in any manner whatsoever, and I want to say to the gentlemen who are behind this proposal that if they can do anything to make the control of the State greater, I am going to vote with them, but I am going to vote against them upon this proposition, because I think this proposition is inherently dangerous and contains in itself, as Mr Marshall well said, the elements of danger which will prove a pitfall in the future and lead to endless adjudication by the courts.

I agree with Mr Blauvelt when he says that whenever a policy of the State becomes fixed and settled, there is no objection to crystallizing it into the constitution. I agree with him absolutely. I agree further with him in the proposition that there is no objection to putting into the constitution the precise policy of the State. There you stop. I agree with you absolutely, when a policy is settled, it may be crystallized into the constitution. But when you are about it, I insist, and I think the people of New York will insist, that you be precise about it and state just what you mean, leaving nothing to inference and leaving no pitfall or loophole for further adjudication. Is this language precise in this amendment? With all due respect to the constitutional authority who, if not fathers, at least supports this proposal, I beg to say it offends against the very simplest and most fundamental principles of English rhetoric.

"The State shall continue its supervision and control of the education of children as a state function."

I believe in that; but the trouble about putting a clause of that kind in the constitution is this: That it opens the door immediately to inquiry as to what are the limitations. What is the extent of these functions vested in the State? It opens the door, and when we look in, what do we find? Hundreds of statutes, hundreds of court adjudications. Is that good craftsmanship, to put into your constitution general language, not specific and not stating just what the control is that you desire to vest in the State?

I object also to the succeeding clause, and I respectfully direct your attention to this language: "And no powers in derogation thereof shall be conferred upon the local authorities or any civil division thereof."

"In derogation." What does "derogation" mean? Mr Marshall has said, "In restraint." Is it a limitation? Whom do you propose to limit? The air? No. You have something back in your minds, even though you do not express it, and we all know what the limitation is.



Anthony J. Griffin



The limitation is upon the Legislature. There is the danger of this language. Here is the pitfall that is going to entangle the feet of progress. Here is the language that is going to be the source of endless pangs and confusion.

Why limit the power of the Legislature? The Legislature has had the right in the past to act upon all of these matters. Why curb the Legislature? Because there are gentlemen, Mr Chairman, so constituted that they believe that the Legislature as a representative body ought to be stripped completely of all powers, and they are anxious to see vested in a limited board, a Commissioner of Education, all control over education.

Mr Byrne—Unless such a part of this clause was in, “no power in derogation thereof,” would it not defeat the very purpose, namely, that “the State shall continue its supervision and control,” if the Legislature were then permitted to pass laws “in derogation” of that first statement?

Mr Griffin—It certainly would.

Mr Byrne—Then is not it absolutely necessary, if you are to have the first part, that “the State shall continue its supervision and control,” that then the Legislature shall be restrained from passing any law “in derogation” thereof?

Mr Griffin—No, because I believe that the Legislature is a part of the State. What is the State? It does not consist of the Governor and state officers. It does not consist of the judicial department. It does not consist of the Legislature. But, it consists of all working together, coordinated and harmonized, and when we speak of the State, we speak of all the State, with all its functions so coordinating.

What is the necessity for this proposal? To crystallize a fixed policy of the State. As I said, I agree with that perfectly and absolutely. But that is no excuse to inject into the constitution something which is not as specific as the hundreds of court decisions and of statutes that are already in existence and to which reference is necessarily made.

Mr Blauvelt, in speaking of the necessity for this bill, says that should the board of education fail to keep up the schools according to the standard of the State Department of Education, that the board of estimate and apportionment of the city of New York might fail to make an appropriation for schools, that it was to guard against this danger of the city of New York being recreant to its own trust, the city of New York forgetting the duties and obligations which it owes to the children of the city of New York.

Has anyone here ever heard of the city of New York being behind hand in matters of education? Is it not a fact that New York City spends its own money, raised by taxation upon its own citizens, for the support of its public schools, for the support of its high schools and its colleges? We don't come to the Legislature, year after year, for appropriations of large amounts for the maintenance of normal schools and state schools. Our children don't go to them. They go to the public schools of the city of New York, and they go to our colleges in the city of New York, and if they go outside of the city of New York, they pay their way.

A ridiculous, unthinkable hypothesis is the only excuse that I have heard here, amid the flood of oratory on behalf of this amendment. What is the real reason? We may as well be frank. What have you got in the back of your heads with regard to this matter of state regulation of education? And remember, I am with you on that proposition. I will go as far as any man here for state regulation of education.



I have got on my desk here a circular letter emanating from the Guardians of Liberty. You know the kind of guardians of liberty they are. It is dated July 31, 1915. It is addressed: "Dear Sir: The Hudson Court, No. Eighty-one, Guardians of Liberty, in meeting assembled, have approved the following four amendments, the first of which has been introduced at the Constitutional Convention, by the Hon. James L. Nixon of Buffalo."

I will omit the first three, as they are not relevant to this discussion, but I draw particular attention to the fourth, reading as follows:

"Placing all education under the direction of state educational officers and maintaining a uniform, standard course for all."

That shows what they think about it. Now, how does this idea disseminate from the halls of this convention and get out at large among the people, that this proposal has something behind it which is not expressed in its phraseology?

Mr Schurman—I should like to make on behalf of the committee an explanation. There were different formulas carefully considered by the committee. The committee consists of representatives of public schools, private schools, parochial schools. All those interests were duly considered by the committee, and that committee thus constituted unanimously agreed on this amendment.

Mr Griffin—I think, Mr Chairman, that is more in the nature of an answer and as part of the remarks of the delegate than as a question. I don't see that I am called upon to answer that. I am very sorry if the committee on education are unanimously in agreement upon language which is so clearly ambiguous that it has needed two days of discussion to elucidate it, and it is not elucidated yet. It does not matter what the chairman on education had in his mind. I have the greatest respect and admiration for him personally, but we are getting down now to the framework of our government, the organic law, and I insist and you insist that the language of that instrument should be pure and chaste and clear. That is all that I think we are called upon to do. There are the Guardians of Liberty with their circular, putting down their conception of what this proposal means. Now, let us assume for a moment that they are right in their assumption of what this proposal means, and in what they say. Don't you see, gentlemen, what it would mean? It would mean that the State Department of Education would have the right to go into your own home village and home town and tell the local board there the school books that the children would have to employ. It would arrogate to itself the right to dictate to every subdivision in the State the mode of education, the curriculum, the school books and the textbooks. Do you want to put yourselves on record in behalf of a proposition of that kind? Are you willing to give up your liberty with regard to education and give your assent to a proposition so ambiguous, so misleading as this? If so, go ahead.

Mr Kirby—The letter or circular that has been read into the record by the distinguished gentleman from New York, I do not understand its application, nor do I see that it should be considered by a member of this convention in determining what he shall do upon a proposition which is now before it for its consideration. I have no speech or address to deliver upon this matter, but the injecting of the question by the reading of that circular here

is repellent to my feelings as an American citizen, and I believe that it is the confidence of every member of this body that the distinguished chairman of the committee on education and the sponsor for this amendment stands before the people of this State and of this nation as one of its great educators, possessing the broadest outline, and under no circumstances would he father any measure which embodied the principles referred to by the organization which has issued the circular which has been read into the record.

I do not understand what all this fuss is about relative to this measure. It is plain. It is simple. We find here a proposition which simply reads into the organic law of this State that which is now the law and that which every true American citizen, who believes in a state system of education, believes should continue in the law, and every American citizen who believes in that principle believes it should be in the language of this amendment, "continued as a state function and no power in derogation thereof shall be conferred upon any local authority or civil division thereof." Plain and simple—and why this atmosphere of doubt and fear and apprehension about this measure? What is its purpose, and why? It is clear, it is simple, and most of the delegates of this convention by this time must have made up their minds as to the respective merits of this or the other proposition before this body for consideration, and I submit that this discussion should be brought to an end and that we should vote upon this proposition, if it is possible.

As I understand it, the rights of the various municipalities in this State, as far as the management and control of their schools, in the sense that they are now constituted, is concerned, is not altered in any manner. We are continuing the present policy. Boards of education in the various villages and cities of the State are in no wise affected by the proposition now before the body for its consideration. If I am wrong in this statement I beg to be corrected by the distinguished chairman of the committee.

I submit, Mr Chairman, it is time that we voted upon this proposition, that we stopped talking about it; this atmosphere of apprehension, of fear, of some mystery about what is going to happen in the future, or that we are laying a great power over the schools of the State which may be exercised in a manner to create a baneful influence. I hope the amendment will prevail.

Mr Wickersham—Mr Chairman, I move to substitute for the language in italics in the measure under consideration, no. 749, lines 3 to 6, the language employed in proposal 525, introduced by Mr Schurman, which Mr Marshall read, and which I will read again as follows: no. 525—"Supervision and control of the education of the children of this State shall remain the duty and function of the State and shall never be surrendered."

Mr Chairman, I quite agree with Mr Marshall that the language of this amendment has the constitutional ring which appeals to students of the old constitutions. It leaves nothing to debate arising out of even apparent ambiguities. It declares a principle which it seems to me every citizen of this State must subscribe to. I understand, Mr Chairman, that the committee intended to translate the same thought into somewhat different language in the proposal which was reported, and which is before the committee. But, Mr Chairman, it seems to me their translation was not a happy one, and, with all deference to the able men composing that committee, I do

think that the language employed in the original proposal more accurately expresses the idea which lies at the bottom of this measure than does the substitute which was reported out. The phraseology, a thing shall be continued as at present, is not altogether a happy one. It is employed in other provisions of the constitution, with regard to the continuance of courts or other tribunals, but I think the better term is the word "remain"—the power shall remain with the State and it shall be its duty and its function to exercise that power as the exigencies of the present time may require. It seems to me that this language ought to appeal to all those who have assented to the change and that it should reconcile the differences of those who, while avowing their adherence to the principle, have taken exception at the expression, and for that reason I have made the motion to amend.

Mr A. E. Smith—Before the vote is taken on the proposed substitution which is in the nature of an amendment to, no. 749, I want to address myself to one of the several proposed amendments: the one that proposes to make the language read, "The State shall continue its present supervision and control of the education of children."

That would be exceedingly dangerous for the city of New York, because when that fraternal spirit that the Senator from Saratoga speaks about ripens into its full bloom, New York may get its just share of the money appropriated for educational purposes. But how we fare at the present time might be interesting.

The constitution has read for twenty years, "The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children," and so on. Wait until I read to you how this has been done. From the report of the State Education Department for the year 1913, the apportionment of the state money made pursuant to appropriations of the Legislature of 1912, on pages 620 and 624, we find that in the great State of New York there are, between the ages of five and eighteen, 1,492,912 children attending the public schools. In Greater New York, 766,100 children, so that in Greater New York there are just about 40,000 more children attending the public schools between the ages I mentioned than there are in all the rest of the State. But this is the way the money is given out: For vocational schools, appropriated for the whole State, \$26,686,000. New York City got \$10,000 of it.

Mr Parsons—For vocational schools?

Mr A. E. Smith—For vocational schools.

For teachers there was appropriated for the whole State, \$4,947,778.84. New York City got of that, \$1,811,525.

A Delegate—About one-half.

Mr A. E. Smith—Pretty nearly one-half? Oh, no; \$1,800,000 out of \$4,000,000—wait until we get the rest of the figures together and we will find it is just about one-third. For superintendence there was appropriated \$72,800. New York got \$800 of that. The total, \$5,047,265 for the whole State; for New York City, \$1,822,925.

Mr Marshall—I think you must have misunderstood your original figures. What are the figures for vocational schools?

Mr A. E. Smith—Twenty-six thousand dollars, and New York City got \$10,000 of that.



Mr Marshall—Well, you said \$26,000,000.

Mr A. E. Smith—Did I? That is a habit of mine, to talk in large figures.

Mr Blauvelt—Was this appropriation made by statute, or would you have it inferred that the Department of Education arbitrarily discriminated against the city of New York?

Mr A. E. Smith—No, I believe it was pursuant to statute. I believe the law requires a certain quota to be given on the basis of the number of teachers. But this is the way it works out. It does not make any difference how it is ordered; this is the result.

Mr Blauvelt—Is it not a fact that the city of New York might, if it saw fit, employ a sufficient number of teachers on its staff that would give it its quota in proportion to what the rest of the State gets?

Mr A. E. Smith—The answer to that is that every teacher that is added to the working force of New York naturally will require a larger appropriation by the Legislature, but this proportion between them will never disappear.

Mr Blauvelt—Is not that the fault of the city of New York?

Mr A. E. Smith—No. Absolutely no. Absolutely no. If the gentleman will wait until I finish this statement—the difference in the teachers is only a small part of this thing. Wait until I give you the total and show you what the State is giving upstate to 726,000 children, and what it gives to the city of New York, with over 40,000 children more. Now, the gentleman from Rockland knows very well the reason; he knows the reason just as well as I do. The upstate communities do not contribute as much as we do. They get their supervision for nothing. We pay for ours. We maintain our normal schools and we pay 75 per cent of the cost of theirs. You know this is a kind of winding-up affair. The further you go into it, you find we are tied up into this whole thing. We are paying about twice for everything. Now, salaries of superintendents.

This is pursuant to statute—\$186,183.87. Every dollar of that is spent outside Greater New York. We maintain our large force of superintendents entirely at our own expense. This is for upstate.

Now, the traveling expenses of these superintendents was \$39,199. Now, the expense for normal schools, of which the city of New York receives nothing, was \$701,507. The total expense for district superintendents of normal schools, of which New York receives not one penny, was \$922,890. Now, add that to the difference between the teachers' salaries, and New York is getting the worst of it. The worst of it, that is the way to put it, by actually \$4,147,230, with 40,000 more children to educate.

Mr Blauvelt—Would not the adoption of these two amendments be in the interest then of the city of New York?

Mr A. E. Smith—They would, with the word "present"—if you get me, I am against the "present supervision and control," because I agree with Mr Marshall, if you put the word "present" in there, we will never be able to repeal the law which provides for the superintendence and that gives them their traveling expenses and we will never be able to saddle upon the whole State, where it ought to be, the cost of the normal schools or put it on the counties where the normal schools are.

Mr Wickersham—Would not the substitute which I moved a moment ago avoid the very objections to which the gentleman has referred?



Mr A. E. Smith—Yes, no. 749, if not amended, will be all right. The difference between 525 and 749, as I see it, is just in what you just said, and in what Mr Marshall said, that it is a little more,—that it has got a little more punch in it (laughter), so to say. It sounds a little better. There are not so many words that you can play upon. You get rid of our friend “derogation,” probably, and several more of these.

Mr Wagner—Perhaps surrender would be better.

Mr A. E. Smith—Well, “surrender” sounds better, for we all know what that means.

So far as that is concerned, I think 525 is all right, but the point I make is that whatever the convention finally adopts, it must avoid anything in language, or that could be spelled out of the language which would continue the condition which gives New York so much the worse of it, with all due respect to the fraternal spirit.

Mr Brackett—I am so weary, I am getting wearier every minute. If I should ever reach within seeing distance of the “Pearly Gates,” within whose enfolding arms, for the peace of which I hope we all hope and pray, I expect as I am making my plea to St Peter to permit me to come in to hear wheezing up the hill behind me the gentleman from New York with his complaint that there are more Republicans getting in than there are Democrats; and I am very sure that he will find that the reason for it is that there is some inequity somewhere in the constitution, or in statute, that girds around and binds and trusses too tight the city of New York in its relation to the great Empire State.

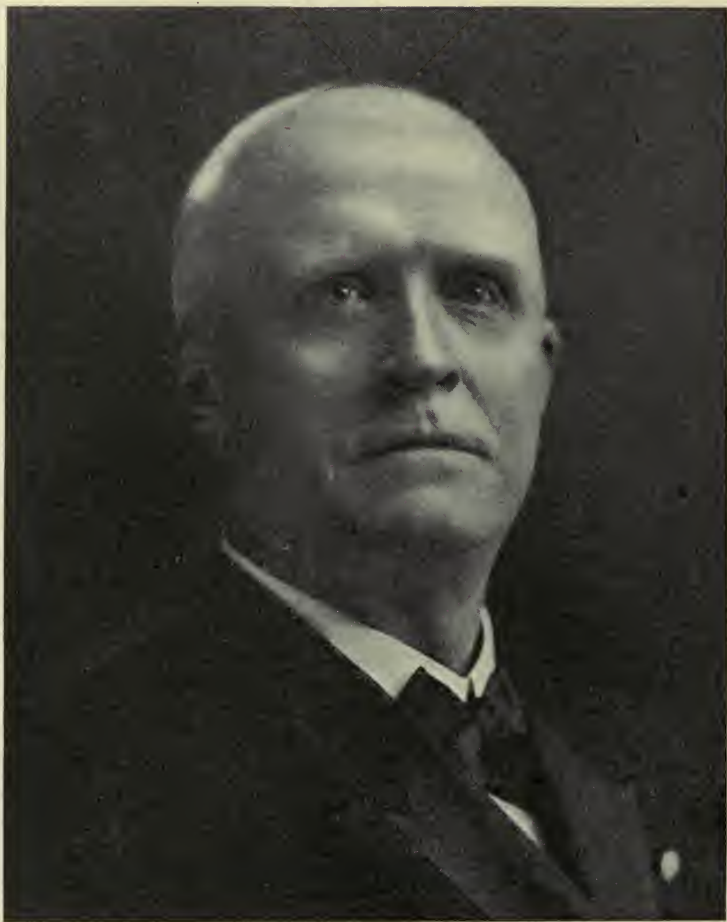
Now, Mr Chairman, it has been with the greatest difficulty that I have restrained myself from hitting my brother Smith on the wrist politically.

I am trying to bear deference to the President of the convention; I am trying to follow our leader, the gentleman from New York, when they say that there must not be any injection of politics into this convention under any circumstances; but when every time any possible question comes up, and it doesn't make any difference what, the gentleman from New York has to rise and to present to the consideration of the convention the sore toe of the city of New York, it comes with the greatest difficulty that I can follow my leaders as indicated.

I suspect, Mr Chairman, if there should be a nostrum introduced in this convention for the cure of hard and soft corns, that the gentleman from New York, Mr Smith, would at once be on his feet insisting that the Legislature of the State of New York, dominated by the countrymen, had imposed upon the city of New York the largest and juiciest selection of hard and soft corns New York ever had, and that New York must have more than half of the remedy.

Now, with all due respect to the gentleman from New York and his views on many questions, I wish to say that I thought that education was away beyond any possibility of the injection of politics of any kind. I did not believe it was possible for even the politically tortuous mind of the gentleman from New York, Mr Smith, to be able to inject into this question the woes and the troubles of the city of New York.

Mr A. E. Smith—I simply wanted to show the gentleman how far this question of discrimination against New York has been carried, even under the Education Law.



Edgar Truman Brackett

Mr Brackett—I know, Mr Chairman, and do you know that, as I reflect on it, the tears as large as walnuts are running down my cheeks, when I think how poor New York has been kept and made by the Legislature of the State of New York.

Why, Mr Chairman, if it had not been for the countrymen who are members of the Legislature of the State, I suppose that New York City would have been infinitely richer than now, because the poor countrymen have been having a few dollars more than an exact mathematical proportion, wherewith to send their children through the snowdrifts for miles so they can have their education.

Now, the gentleman from New York must get it out of his system that there is anybody trying to do anything wrong to the city of New York, and he wants to get it into his system, and he must get it into his system, that the fraternal spirit still exists, and instead of whimperings and instead of fault-finding, instead of all the methods which he adopts to inject his New York and his Democratic politics into this convention, hating his sin, we still love the sinner, and are going to continue the fraternal spirit in about the same old way.

Mr C. A. Webber—As one interested in the parochial schools, I take objection to the substitution that is now proposed. The committee, after many days of wrangling over this very proposition, and in order to conciliate the different interests that found fault with the substitute that is now proposed, as having some possible tendency to invite interference with the parochial schools, agreed upon the amendment as proposed in general orders, and I think at this late hour it is a most undesirable thing to make a change in that amendment. It can not and will not be satisfactory. We have had a large number of delegates to this convention discuss the original amendment offered in general orders and every one of them has stated, and it is a matter of record, that there is absolutely no intention on the part of this convention to interfere by this amendment with private schools.

We are thoroughly satisfied with that, because we understand the rule of constitutional construction to be, that the courts may look to the records of this convention to find out what we mean; and we have fully felt that the courts are going to take our meaning and our declarations rather than those of any body outside of the convention, whoever they may be; and having gone on record unanimously that there is no intention to interfere with private schools by this amendment, and having discussed up to this moment the proposition as worded in the amendment presented in general orders, I do not think now that we ought to make any change, or that we ought to go back to the language that excites a suspicion upon our part, because of the change in language. And to do that now might be an indication, and might give room for argument, that this convention intended to go back to the original proposition and open up the possibility of interference with private schools.

Mr Mereness—I move that the committee rise and report favorably to the convention upon Mr Wickersham's substitute for the proposition reported by the committee on education.

Mr Wickersham—I presume the first motion is upon the substitute before the motion to rise is in order, and if all those delegates who desire to speak on it have finished I shall call for a vote on my substitute.



Mr D. Nicoll—Mr Chairman, will you tell me what has become of Mr E. N. Smith's substitute?

Mr Wickersham—It was an amendment, not a substitute. This, Mr Nicoll, is a proposed substitute which, of course, takes precedence over the various amendments to the original proposal which were moved the last time we were here and the question should properly, Mr Chairman, be on my substitute.

The Chairman—The question will be on the motion of Mr Wickersham to substitute—

Mr J. G. Saxe—Mr Chairman, before that motion is put, I want to simplify the issue by saying that I understand that after I offered my proposed amendment the committee on education met again and thought they meant exactly the same thing and preferred their own amendment. In view of that action by the committee, and what has been said by Mr Marshall and Mr A. E. Smith, I withdraw my proposed amendment.

The Chairman—Which one was that?

Mr J. G. Saxe—Those are the first amendments which were moved and the only ones which are printed on the general orders calendar, and they are withdrawn.

The Chairman—One moment until I get the situation. There was a motion made by Mr E. N. Smith to substitute that has not been acted upon before Mr Wickersham's motion was made. Is that urged or withdrawn, Mr Smith?

Mr Westwood—Mr Smith is not here. He is out in the committee room.

Mr Deyo—Mr Chairman, by Mr Smith's own motion, that amendment was laid on the table.

Mr Griffin—Mr Chairman, a point of order. The amendment of Mr Smith was offered to general order no. 34.

Mr Wickersham—Mr Chairman, I rise to a point of order. The motion is not upon the amendment; the motion is upon the substitute, which, of course, precedes discussion upon amendments. If the substitute is not adopted then the question will recur upon the amendments. I call for a vote upon the substitute.

The Chairman—The question will be on the substitute offered by Mr Wickersham—

Mr Griffin—Mr Chairman, I ask that the substitute offered by Mr Wickersham be read.

The Secretary—By Mr Wickersham: Strike out the italicized matter in lines 3, 4, 5 and 6 and insert: Section 1. "The supervision and control of the education of the children of this State shall remain the duty and function of the State and shall never be surrendered."

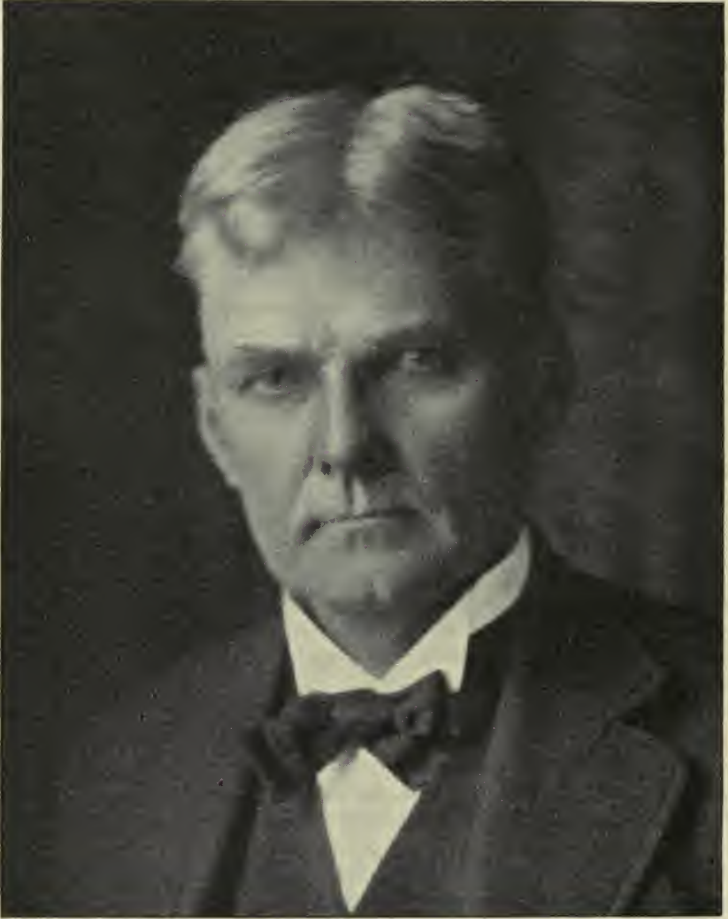
Mr D. Nicoll—I have listened with very great attention to this debate, and now as we are about to vote I find myself somewhat perplexed as to what course we ought to take. I understand that the proposed substitute of the gentleman from New York is suggested in place of the one reported by the committee on education, and it is urged for adoption because it is suggested that this language is more perfect than that reported by the committee. But, whether you consider this proposed substitute, or that suggested by the committee, the question arises, why do we put this in the constitution at all? There is no use of amending the constitution unless there is some very valid reason for it. My idea is that it is the business of this convention in revis-

ing the constitution to cut out those things in it which the committees find to be objectionable and to put in it those things which meet existing abuses. Is there any abuse or evil here that we are about to redress by the adoption of this amendment? If so, what is it? I understand the distinguished chairman of the committee to say in his opening address that this amendment merely constitutionalizes the *status quo* and so does the substitute proposed by the gentleman from New York except that its language is more eloquent and impressive. So the question before the committee now is, are we to constitutionalize the *status quo*? Is that the business of the convention? If so, every committee can find some *status quo* to constitutionalize. That practically means that the committee looking over the whole subject, not finding anything in the constitution very objectionable and finding no evils to be redressed, says, "Well, we have got to do something to justify our existence and the length of our sessions and therefore we will constitutionalize the *status quo*." Well, I am bound to say that that does not impress me as any reason why a body of grave and reverend seniors like ourselves should undertake to amend the constitution in this respect.

Mr Deyo—I was personally in doubt as to what my vote should be upon this proposition. I was in the same frame of mind as Mr Delegate Nicoll, until after I had heard the argument of Delegate A. E. Smith, upon the proposition before us, and if there is any logic in the argument of Delegate Smith, then there is a reason why this convention should, so far as it is able to do so, constitutionalize the *status quo*. If there is any point to the argument made by Delegate Smith of New York, it is to the effect that New York City is not getting a fair deal in the matter of education. The purpose, evidently, underlying his remarks, and that which gave rise to it and point to it, was that possibly at some time in the future the Legislature of this State might proceed on a different theory; it might proceed on the theory that education is no longer a state function but a local function.

Delegate Smith of New York holds up to us as a possible policy of the State hereafter that moneys which are raised in New York City for educational purposes shall be spent in New York City for educational purposes instead of having the moneys which are raised by taxation on the property at large of the State used for educational purposes in the State of New York. In other words, if the argument of Delegate Smith of New York has any point, it is to urge a localization of the educational functions of the State, leaving to New York City the care and control of its problems of education and leaving to the other localities of the State the control of the educational functions in those localities.

Mr A. E. Smith—I want to save him from using up any more of his time or the time of the convention by stating that he entirely misunderstands the point of my argument. I am for the state control of education, unquestionably. The point that I tried to make was that in that state control a section of the State has been discriminated against in that superintendents of the schools in the upper part of the State are paid for by moneys contributed by all of the people of the State, while the superintendents in New York are, by statute, paid with the moneys of the people of New York City alone. It is not that I have in mind a separation, it is not that I would want to subscribe for a moment to the theory that the people of the city of New York are unwilling to put in their fair share for the education of the children of all the State. That is not the point.



Israel T. Deyo



Mr Deyo—Mr Chairman, I don't think the trouble is mine that I misunderstood the main point of his argument. But, taking the explanation or apology, as the delegates may see fit to term it, his figures were based upon a wrong assumption, to begin with.

Mr A. E. Smith—I would like to inform my friend that I was not arguing against the form of these bills. I was arguing against the amendment by the gentleman from New York, Mr Saxe, who proposed to make it read, "the State shall continue its present supervision and control." Now, that is not an apology. It is an explanation.

Mr Deyo—Mr Chairman, the statement was also made by Delegate Smith, in the course of his argument, to illustrate the point which he was endeavoring to drive home, that the normal schools of this State are supported for the benefit of the upstate districts and not for the advantage of New York City. Now, everybody about this circle knows that the moneys which are appropriated for the support of normal schools in this State are appropriated for the benefit of all the State; not simply for the upstate districts, but for New York City as well.

Mr Wagner—Is not the same argument applicable to the normal schools of the city of New York? Are they not for the benefit of the whole State?

Mr Deyo—Mr Chairman, the normal schools of the State are open to every person who qualifies from every section of the State. Every assembly district, whether it is below the Bronx or above the Bronx, is entitled to send a certain number of pupils to the normal schools of this State. In addition to the facilities which are provided for by the State at large in the maintenance of the normal schools, New York, Buffalo, Syracuse and other cities supplement the work of the state normal schools by the maintenance for their own local benefit normal training classes or normal training schools. That is a matter in which the State has no general interest. They are supported and maintained for the purposes of the locality, and they are properly so supported and maintained.

I want to emphasize the point once more, which I emphasized once before in speaking upon another question that was before the convention, the pressure of taxation does not rest primarily upon the localities as municipalities. The pressure of taxation rests evenly upon the dollar, wherever that dollar is found, and because New York City has drawn a circle about itself, and more wealth is found within that circle than is found in other similarly circumscribed circles in the State, that gives it no right to say that therefore the money raised by taxation on the property within that circle should be spent entirely within that circle. As Delegate Clearwater has just suggested, it may be drawn largely from the country districts; that is true. In view of the arguments that have been made, it seems to me we ought to place this matter in the constitution where there shall be no possibility hereafter of the statutes being so changed that education can be regarded as primarily a function of the municipality instead of a function of the State. And, therefore, I am in favor of the amendment proposed by Delegate Wickersham.

Mr Wagner—Can you give us an instance where the Legislature has during the last twenty years passed any legislation in derogation of the supervision and control of education as a state function?

Mr Deyo—Mr Chairman, I am not aware of any statute having been placed upon the statute books by the Legislature to lessen the power or the

authority of the State in its supervision and control of education, and, so far as I am concerned, I am willing to vote here and now in such a way that it never can do so.

Mr M. J. O'Brien—Mr. Chairman, I only want to say a word. I am not going to make any address. I am in entire accord with what has been said by Mr D. Nicoll. I have not heard, and I have listened with great patience, any necessity for any such proposal being placed in the constitution, but assuming now that it is and the gentleman who has last spoken finds a reason for constitutionalizing this subject, we have this situation—I am speaking now on the importance of our not proceeding with haste. I think every gentleman in this convention recognizes that this is one of the most important questions that we can deal with, this whole subject of education. The question of this substitute was before the committee where all the representatives had an opportunity to be heard and where their expressions were given, and as a result of which this proposal, as recommended by the committee, was presented to this convention. I do hope that the subject will be deferred, the question of taking a final vote, until the committee, in the light of this discussion—if they finally conclude that it ought to be again presented, we do not need any very long discussion on it, and we will then all be prepared to vote, but I would not like at this time, in view of the difficulty that I should find in reaching a conclusion as to the course to be taken, to have a vote taken on the substitute now. If it is agreeable to the gentleman who moved it, I would like to have it lie on the table, or to report progress to the convention and ask leave to sit again, and then we can take this up. Thus far, I think the subject has been very well presented. We are all indebted to the gentlemen who have given time and attention to it, and we will then have an opportunity to get the benefit of what will be the judgment of the committee, which will very largely control me. I therefore hope that at least there will be a little time, until tomorrow or the next session of the convention, during which all of us can have an opportunity of forming our judgments as to the form in which we think this proposal should be placed in the constitution.

Mr Wagner— I feel a good deal as Mr Nicoll does, and also as Judge O'Brien does, about this whole question. I have been studying for several days what was proposed by the word "derogation," and I finally have made up my mind on that, what those who fathered that proposition as being enacted into the constitution meant or mean by advancing that proposition. But just as soon as my mind is pretty clear upon the meaning of that word, we are now met with a new proposition that we shall use in place of the word "derogation" the word "surrender," and before I vote in favor of either proposition, I want to, firstly, satisfy my mind whether any such provision is needed in the constitution at all; and, secondly, if needed, what the word "surrender" means.

Now I do not think that we should be—that our conduct in giving a little history of the effect which legislation had upon New York City should be offensive to the delegates of this convention. I have no idea that Mr Smith, when he gave these figures, intended to lodge that as a complaint by the citizens of New York against the contribution which they are making for the education of the children of the State, but rather to show that New York



Robert F. Wagner



City is interested in education quite as much as all the citizens of the rest of the State; and that, without complaint—because they have made no complaint about this—they are making this liberal contribution to the state treasury so that the children throughout the State may be educated, and, in addition, out of their own pockets, are paying for the education of our children in New York City, with practically no state aid, including our normal schools and our colleges. Now, in view of the conduct of the citizens of New York and their attitude toward education, I want to know why it is necessary at this time to make a declaration which in 1894 was found to be unnecessary. Mr Deyo a moment ago, in answer to my question, said that he could think of no law enacted by the Legislature in twenty years which tended to surrender or was in derogation of the exercise by the State of its supervision and control in matters of education.

In view of all this, what is the point in this new proposal? Why must we now announce in the constitution that there shall be no legislation in derogation of this power? Why must we now say it shall never be surrendered? Now, if it is intended as a reflection, I protest against it; and if it is unnecessary to put it in there, why put it in? Now, those are the things which are mystifying my mind, and I should like to have a further opportunity to determine for myself just what is meant by this word "surrender," because there are certain features even of questions affecting, perhaps, education, in which I should not want to have the Legislature limited, so that it can never surrender them.

Mr Schurman—In view of the situation into which this matter has drifted—perhaps I should not say "drifted," but in which we now find ourselves—in connection with this subject, I have desired to submit the matter anew to the committee on education. The convention is now confronted with an alternative which the committee, since it worked out this final formulation of this proposed amendment, has not seriously considered, and if the convention would report progress, I should ask the committee to meet immediately after the adjournment of this session, and I could perhaps report to you this afternoon the decision of the committee in relation to the alternatives now before the convention. I earnestly hope, Mr Chairman and gentlemen, that that opportunity may be given to us.

Mr Wickersham—Mr Chairman, in view of the statement made by the chairman of the committee on education, I move that further discussion of this measure be postponed until the afternoon session; that the committee do now arise, report progress and ask leave to sit again upon this measure this afternoon.

Mr Brackett—May I make this suggestion or, rather, announcement to the members of the convention? In view of the requests that have been made, I am not going to make any objection to asking leave to sit again on this proposition at this time, but I do want to remind the members of this convention that every time that a matter has been discussed as fully as this has, and we have then asked leave to report progress and sit again, it simply means a duplication of the time that is taken for the discussion. Therefore, with the utmost wish on my part to have the most unlimited discussion that is required for the illumination of any question, I hope that it will not be regarded as unfriendly by any delegate here if hereafter objection is made where a matter can be carried to a vote in the session—if objection is made to asking leave to sit again.

The Chairman—The question is on the motion by Mr Wickersham. All in favor of that motion will signify by saying Aye, contrary minded No. Carried.

After convening in the afternoon the consideration of the question was resumed as follows:

Mr Wickersham—I move that the committee of the whole resume the consideration of the number which was under discussion when the committee rose.

The Chairman—You have heard the motion by Mr Wickersham. All in favor signify by saying Aye, contrary minded No. The motion is carried.

Mr Schurman—Mr Chairman, the committee on education has been in session and has carefully considered the proposal which was made or suggested in committee of the whole this morning relative to the substitution for the committee's proposed amendment of another amendment which has been on our files, and the committee with fifteen members of the seventeen being present, unanimously voted to adhere to its own proposed constitutional amendment.

You will remember, sir, that in the very able and instructive speeches to which we listened from Senator Blauvelt and afterward from Mr Marshall this morning, they agreed entirely with the report of the committee. They were satisfied with it. I am glad at the very outset to call that fact to the attention of the committee.

The question of home rule has been mentioned more than once in the convention, and it has been considered in connection with this proposed constitutional amendment. We must, I think, frankly recognize that, considering the practice of this State and the line of judicial decisions, we are perfectly right in saying that in respect to education, at any rate, there must be an exception to the home rule program. Whatever else the State reserves to itself, whatever functions it shall keep unimpaired in its own hands, education will and must come first.

Some reference was made this morning in remarks by various speakers to the relation of this proposed constitutional amendment submitted by the committee on education, to private and parochial schools. I think perhaps that question has been sufficiently answered by the speeches to which you have listened, especially the speeches made by Mr Kirby and Mr C. A. Webber, but I desire, if I may be allowed, to supplement in a few words the very impressive and convincing statements which they have already made. I want once more to call attention to the fact that the committee on education represents in its membership all the fundamental faiths of the country. I want to say that the bearings of this and of every other amendment proposed on private and parochial schools were carefully considered and we reached, in the amendment which the committee presents to the convention, a proposal unanimously, cordially indorsed by every member of that committee. And, as I happen to know, some of the members of the committee had opportunities of consulting their friends who are especially interested in private institutions regarding the possible bearings of this proposed constitutional amendment upon those institutions.

I think, therefore, Mr Chairman, that we can say there is absolutely no doubt about the attitude of the committee, and after listening to the able

speech of Mr Marshall, I think every one must be convinced there can be no doubt about the bearing of the language used by the committee in expressing their views.

There remains the question to which I proposed—or before I come to that I want to make another statement regarding the relation of this proposed constitutional amendment to private and parochial schools.

It has been suggested that there was something behind this proposal. I think that suggestion is too absurd to need refutation. But if there is any lingering, any doubt whatever, either here or outside this hall, I want to repeat most emphatically that all there is in this proposed amendment is on the face of it.

Furthermore, I desire to say on behalf of the committee, speaking for it, and for it unanimously, that we have not intended to make any change in the nature or extent of the supervision and control which the State now exercises over private and parochial schools. On the contrary our object in the consideration of every amendment that has come before us in which the issue was involved was to see to it that the existing relation between the State and those institutions should remain absolutely unchanged.

Mr Chairman, there remains the other issue to which Mr D. Nicoll very forcibly called our attention toward the close of the session this morning. I understand Mr Nicholl's position—not perhaps his ultimate position, but the position which he voiced in making that inquiry—to be substantially this: Assuming that everything the committee and its numerous friends on the floor of the House have said in favor of this bill, is true, what is the need of putting it into the constitution? Why constitutionalize the *status quo*? Isn't it enough in revising the constitution to incorporate only such amendments as meet some evil, as redress some evil which has developed since the last Constitutional Convention met? I find myself, Mr Chairman, entirely in sympathy with the views and predilections which inspired that question. It is a fair question and I think we must answer it to the satisfaction of the convention, and I hope and believe we shall be able to do so. I call attention, in the first place, to the fact that in 1894 the Constitutional Convention did insert new articles in the then existing constitution.

From the point of view at which we now find ourselves, none of those changes were more important or significant than the article on education, providing for the first time in the history of the State for a system of free, common schools. That article was inserted because the policy had been established and because in other states of the Union similar constitutional recognition had been given to such a policy.

We find ourselves today in a similar position. A certain policy has been established in the State in regard to the control and supervision of education.

Education, Mr Chairman, is the most important of all the activities of the State, as I think every gentleman on this floor will concede. It has to do with the training of the rising generation and their preparation both for citizenship and for living worthy lives as individuals.

If you could make an exception for the special incorporation of a clause or article in the constitution referring to any one activity whatever with which the State is concerned, that exception would in the first instance be made on behalf of education.



But, Mr Chairman, it isn't merely that this is a transcendent function of the State, it is not merely on that ground that the committee on education asks to have it recognized in the constitution. We are asking not only for its recognition; we are asking for its protection. Now, sir, although the policy which we have prescribed is the established policy of the State, it can not be said that it is accepted by everybody. It must be admitted there are certain exceptions. We had gentlemen come before the committee on education recommending, in substance, that this policy be adopted and that, substantially, the schools be turned over to the municipalities; that education be treated substantially like street cleaning, as a municipal function. That contravenes the established policy of the State as it has been established in practice and conferred by judicial interpretation; and that, in the opinion of the committee on education, would be to imperil the greatest interest which the State of New York is charged with. We ask, therefore, that this article be inserted in the constitution, not only in recognition of this transcendent function, this all-important policy, but that it be inserted for the due protection of the educational interests of the State.

I referred to hearings before the committee on education. But, Mr Chairman, I am not confined merely to hearings before one committee of this convention for evidence. There has been in the last two years a great growth of the sentiment in favor of home rule. I, for one, favor that sentiment, and hope the committee on cities will be able to report to us a proposed constitutional amendment which the convention can adopt. But, Mr Chairman, that idea, like any other idea, developing and strengthening itself in a community, inevitably leads to excesses, and one of the excesses to which it leads is, more particularly on the part of the large number of men who come to this State from foreign countries and are unacquainted with our institutions, that even education should be delegated by the State to the municipal authorities—the care, supervision and control of it. Now, in evidence of that fact, year after year bills are presented to the Legislature for the enactment of such a policy.

I hold in my hand copy of a bill presented March 3, 1914, in the Senate, no. 923—An act to provide a new charter for the city of Mount Vernon.

The point I am about to make is that if such a clause as the committee on education is recommending had been inserted in the constitution where the people of the State might read it, such a proposal as the bill I hold in my hand would in all probability never have been presented to the Legislature.

Here is a bill, sir, which proposes to make the mayor the board of education of the city. Here is a bill which gives him power to employ and dismiss teachers and fix their salaries. He may employ and dismiss a clerk, and so on, for the administration of the business of the school districts and fix their compensation. He may make regulations for its government, and for the government of its employees. The mayor, as the sole trustee, shall have the power, subject to the provisions of this act, to purchase, take, lease and hold all kinds of real or personal estate in trust for the school district, for the support and maintenance of public schools, or for any of the purposes of education in said city.

Subject to the provisions of this act, the mayor, as sole trustee, shall have the power to do each of these. One, to establish and organize in said city

such and so many other schools, including night schools, as he shall deem requisite and needed; to establish and maintain, whenever it is deemed expedient so to do, one or more high schools, trade schools and secondary schools; to purchase, construct, furnish or hire, sell or dispose of, school-houses, or sites, and alter and improve schoolhouses and appurtenances, as he may deem advisable; to license all teachers employed in the schools of the city in the same manner and with like effect in said city as the school commissioners in counties.

Mr Wagner—Would you say that that proposed law was in derogation of the principle that education is a state function?

Mr Schurman—I would say that that proposed law contemplates the transfer to the political authorities of a municipality of those, the supervision and control of education, which is by established policy vested in the State independent of the municipalities, and that proposals of that nature would not in all probability come before the Legislature if the principle which the committee on education is contending for were firmly established and written into the constitution.

Mr Wagner—I don't think I made myself clear. Would you call that proposed law constitutional, as being in contravention to the proposal you are now advocating, or is that merely a delegation by the State of certain of its functions to a locality and would therefore still be enacted under the proposed provision?

Mr Schurman—That is a legal question and I can only express my own surmise—I don't think I would go beyond that—that it would be in derogation of the powers of the State.

Mr Griffin—Does not the gentleman know there is no power on earth, either in the constitution or out of it, to prevent a foolish legislator from presenting to either House a foolish bill?

Mr Schurman—Bills of this sort, Mr Chairman, I will say indicate a state of the public mind which needs correction, which needs rectifying, and we think that this bill would go a long way toward the accomplishment of such a result.

The great argument, however, in favor of the incorporation of this proposed amendment into the constitution is the importance of the subject at stake, and the need of protecting it. What is a constitution for, a written constitution, but to recognize such supreme and transcendent policies? Are not we now engaged in considering the advisability of incorporating into the constitution protection for the Public Service Commission? One of our committees has been giving a great deal of time to the question and the men all agree with me as to the desirability of such protection. But it serves as an excellent illustration of the point I desire to make, namely, that the function of government recognized by us as of supreme importance is entitled to constitutional protection in a country in which we have written constitutions.

Now, Mr Chairman, I do not desire to take up more of the time of this convention. This subject has been exhaustively thrashed out in different cities. I think the time has come for a vote, and I hope the convention will now vote upon the question.

Mr Wagner—Mr Chairman, just one more question, if I may, and I am through. The power which it was attempted to give to the mayor of Mount

Vernon, by the act which you have just cited, is the power now enjoyed by the board of education in the city of New York, so that under your theory, if after this provision were adopted a law should be passed giving the board of education of the city of New York the powers which they now enjoy, you would say that that power was in derogation of education as a state function, and therefore was unconstitutional?

Mr Schurman—I should think, Mr Chairman, that the answer to that question would depend upon the disposition which this convention makes of the companion bill submitted by the committee on education, namely, the bill having to do with boards of education and their functions.

Mr Wagner—No, Mr Chairman, if I may interrupt, I beg to differ with you. It may be my fault that I do not make myself clear. I do not think that depends upon any constitutional provision. You gave as an illustration of a proposed act which you considered—that is, giving certain powers to the mayor of Mount Vernon, and your contention was that that was in derogation of education as a state function. Now, I say that the powers which you complained of there were powers which are now exercised by the board of education of the city of New York.

Mr Schurman—I doubt that, Mr Chairman. I think they are quite different, and the point I was making was that those who were behind that bill conceived of education as a municipal function and proposed therefore to make the political head of their municipality the sole board of trustees and to clothe him with all the powers that boards of education ordinarily have.

Mr A. E. Smith—Will Senator Wagner yield to a question? I want to get myself as clear as I can on it. Has the board of education in New York City at the present time the right to grant licenses to teachers without any interference from the State Education Department?

Mr Wagner—As I understand it—and I may be mistaken; I am not clear upon these questions. I am trying to get information. As I understand it, the State has a supervisory power over the standards to be fixed as qualifications for school teachers, but the examination papers are absolutely made up by the board of education in New York. The examinations are held under the supervision of the board of education of New York, as I understand it. The papers are examined and the marks determined by employees of the board of education in New York and the licenses, as I understand, are issued by the board of education of the city of New York.

Mr A. E. Smith—Do you think that that provision of the proposed Mount Vernon charter which gave to the mayor the right to issue licenses would have to be read with any other law, or would he have the power to give them out under any rules and regulations that he might, himself, establish, or by virtue of any standards that he might, himself, set up?

Mr Wagner—Well, in the first place, I think it was an unfortunate proposal. I would be opposed to giving the mayor all that power, but what I contend is this, and what I am trying to find out is this, whether derogation of power by this provision of this constitution will prohibit the delegation of power.

That is the point. Now, it seems to me that that provision in the Mount Vernon charter in simply delegating to a local authority certain of the State functions is not surrendering them.

Now, if every delegation is in derogation, why we are going to have a very unfortunate situation in the city of New York.



Mr Marshall—A delegation is not in derogation. It is creating an agency, that is all.

Mr Wagner—Is not this creating an agency?

Mr Marshall—This goes much farther. This uses these extraordinary words, "To have to the exclusion of all boards and officers, except the Regents of the University, the entire supervision and management of the public schools of the city." It excludes everybody except the Board of Regents.

Mr Wagner—Well, in the exercise of that state function the Board of Regents is the supervisor for the State.

Mr Marshall—It singles out a single board of the state authorities. It excepts the Board of Regents but leaving out of consideration altogether the State at large as a state. It merely singled out one of the bodies of the State which deals with education and which has not exclusive jurisdiction over the subject.

Mr Wagner—Well, of course, the act itself could be amended the following year.

Mr Marshall—As I understand the point which was made by President Schurman simply was that there was a danger, unless there were in the constitution language such as has been proposed indicating it to be the purpose of the State—of this convention to make of education a state function, there might be possibly enacted measures of which this is an example. And some of which might go even farther than that, and hence the desirability of laying down a general rule. That is all I understand that President Schurman had in mind.

Mr Schurman—That is perfectly correct.

Mr Wagner—I am not at all in sympathy, of course, with that proposal from Mount Vernon. Would you consider giving the city of New York through legislative enactment, if this provision were in effect, complete control over the expenditures incurred by the board of education—would you consider that an act in derogation of education as a state function, and, therefore, in contravention of this provision?

Mr Marshall—I have no doubt it would be entirely constitutional to give to the city of New York the power to deal generally with the expenditure of funds and the raising of funds for the purpose of meeting this state need of education. If the law were so enacted as practically to amount to a starving of the schools and absolutely neglecting, as, for instance, to make a provision so inadequate that a large proportion of the children of the city of New York would have no opportunity to have schooling, then I would consider it to be in violation of the principle that the State has to exercise the duty and function of giving instruction, but beyond that there is nothing in this provision which prohibits the giving of authority to the city as the agent of the State to carry out this state purpose, just as in other branches of our law there is a designation of agencies, local in their operation, to perform a state function. For instance, the city of New York has to pay the expense of maintaining the courts within that jurisdiction—certain courts. That certainly is a state function.

Mr Griffin—Under the terrible example quoted by Mr Schurman, of a bill proposing to vest in the mayor of Mount Vernon plenary powers as to education, and to control the entire school system of that city, I want to ask Mr Marshall, whether, in his opinion, if that bill were presented and the

present provision which we are discussing were in the constitution—would he consider that such a bill as that, that terrible example, as in derogation of constitutional powers vested in the State?

Mr Marshall—I have already answered that question. I have not had an opportunity to see this bill until a moment ago. I can see that there are certain features which would be of very questionable constitutionality, in view of the fact that it apparently, by expressed terms, excludes the State from exercising its functions. They say so in so many words, except under certain limitations set forth in the constitution, that the State should not exercise its functions. I am not prepared to say to what extent that bill is unconstitutional, or would be unconstitutional except that I do say that it is a very strong evidence that under such legislation we would be on the very verge of unconstitutionality, to say the least, and it, therefore, is strong evidence of the necessity of a declaration of state policy which should be maintained in respect to matters of this kind. I think it is asking too much of anybody offhand to determine whether or not a law is unconstitutional or otherwise. The important question is, is this a proper principle to be put into the constitution, and if it is there, when the occasion arises, it will be very easy to determine then whether or not a bill is or is not within the purview of that constitutional provision.

- Mr Griffin—That is just the point, and I would like to ask the gentleman, who will determine whether it is in derogation of state authority or not?

Mr Marshall—In the first place, we would have the Legislature sworn to observe the constitution, which would be very careful to avoid a violation of the constitution. Then we would have the Governor who would also determine that question when called upon to approve or disapprove of the bill; and then, finally, we would have the courts who would vindicate the constitutionality of this statute, as they have in the past.

Mr Griffin—And then, Mr Chairman, I want to ask the gentleman, after he has got all through with that, does he consider that any constitutional provision which opens the door to such a rigmarole as that is good constitutional craftsmanship.

Mr Marshall—I don't know what rigmarole you are referring to, whether it is this bill of Mount Vernon, or something which I have not seen, and can not, therefore, pass upon.

Mr Griffin—The rule of grammar that the last thing spoken alludes to its antecedent answers that.

Mr Wickersham—Mr Chairman, I withdraw the amendment which I moved before the adjournment. While I prefer the language of that amendment to the language of the report, in view of the report which Chairman Schurman has made, showing that committee has given it very careful consideration, I do not mean to urge my impression of the moment against their mature judgment.

The Chairman—The question now is on the amendment proposed by Mr E. N. Smith. All in favor of its adoption will signify by saying Aye, contrary minded No. It seems to be and is lost.

The question now is on the adoption of the proposition.

The Chairman—All in favor of its adoption will signify by saying Aye, contrary minded No. It seems to be carried and is carried.

In a discussion of propositions relating to taxation the following statement was made by Hon. Leroy A. Lincoln of Buffalo (Record, p. 1840):

. . . There are 73 town assessors, 42 village assessors and about 750 school district assessors or 865 altogether. The school district assessors appear to be inactive as a rule. There are about 250 school districts. Each district has from one to nine trustees, who act as assessors, and usually accept the work of the town and village assessors, but not always. All assessors including school district trustees are entitled to \$3 per day. Town and village assessors probably receive about \$200 each per annum. I think it rare, if ever, that the school district trustees collect the fees to which they are entitled when sitting as assessors. There is a town collector of taxes, a village collector and a school district collector. The town collector is paid 1 per cent for all taxes collected in the first thirty days, 5 per cent on all collected thereafter and the county gives him 2 per cent on all returned unpaid. The school district collectors are paid 1 per cent on all taxes paid in the first thirty days and 5 per cent on all paid thereafter. This puts such a premium on delay that the railroads had a law passed requiring school district collectors to file a copy of their rolls with the county treasurer so far as railroad property is affected and permitting them to pay their school taxes to the county treasurer.

In a discussion of the same subject Hon. John C. Leggett of Cuba made the following reference to taxes for educational purposes (Record, p. 1851):

. . . As has been said by the delegate from Westchester, that provision prevents the Legislature from permitting or authorizing the assessment and collection of taxes in school districts, in villages, in towns, by any method differing from the present one. . . .

About the first of September, when the school district taxes became due, I wrote a letter to the school district collector of the village of Kenmore, making the same inquiry, and I had just the same result. I paid the taxes after the thirty days, because I did not get the answer until after the thirty days had expired, and the 5 per cent penalty was added.

The following is taken from the record of August 13th (Record, p. 1944):

Mr Schurman—Mr President, on Wednesday the committee on revision and engrossment recommended a verbal change in proposed constitutional amendment no. 749, inf. no. 698. That change was to drop out the word "thereof" and substitute in its place "of the State." The committee on education in bringing that before the committee of the whole asked that the change be made, but no formal motion, for some other reason or other, through inadvertence, was made to that effect. I move that the report of the committee on revision and engrossment, recommending this change, be adopted.

The President—The question rises on the motion to agree with the report of the committee on revision and engrossment, including the change indicated



by Mr Schurman. All in favor of the motion say Aye. Contrary, No. The motion is agreed to.

The following is taken from the record of the debate on the question of home rule for cities because of its bearing upon the construction of the home rule article adopted by the constitution in its relation to public education (Record, p. 1967):

Mr Low — I hope I may answer the gentleman's question without hearing it, before I finish; if not, I shall be glad to answer it when I have concluded. Now, it is objected, first of all, that no authority whatever should be left with the Legislature to pass special city laws, even as to the matters in which, by common consent, the State is interested. Now, Mr Chairman, the cities committee inserted that provision deliberately because the committee believes, if I understand its attitude correctly, that without that provision it may not be possible through general laws to deal successfully with the tremendously varying problems that arise in the city of New York, for example, and in a small city of the third class. That apprehension is not based on theory. *A priori*, I think one would say that it would be very difficult to do that; and, *a priori*, I think one would be very much inclined to say that it is not statesmanlike to attempt to deal with things so very different under the same law, but we have illustrations of the impossibility of doing that in the constitution itself. The constitution as it exists today has to make special provisions in section 10 of article 8 relating to the debt limit of cities for the benefit of the city of New York; and in the amendment which is pending from the cities committee dealing with the financial control of cities, proposing to adopt the state system of serial bonds as far as it is possible to do so in cities, we have to make again a special exception for the benefit of the city of New York, because the city of New York is under contract on its dual subway for the construction of that subway under a sinking fund provision that can not be changed. Now, gentlemen, if in two instances it is found impossible in the constitution of the State itself to deal with New York by common provisions that apply to all the other cities, is it reasonable to believe that all of the problems that will arise in the surging life of the city communities in this State can be dealt with wisely unless there is power in the Legislature to pass special city laws? But in this connection I would like to point out to the convention that these special city laws can not have anything to do with the city's local affairs or its property. And they must be enacted, if at all, subject to the suspensory veto of the locality, and I have just shown the convention that while the Legislature has had the authority to pass a very much larger range of special city laws than that, in six years only eleven such laws have gone into effect without the acceptance of the city.

I submit, therefore, that under the suspensory veto, it is practical to leave with the Legislature the power to pass special city laws without interfering in any substantial way, practically, with the local control of the city, not only of its affairs, not only of its property, but of its local government. Now, the second objection made to that proposed amendment is that the city acts for the State in so many different ways that when the State is authorized

to pass special laws in regard to the government of cities there is some fear that the grant of exclusive powers to cities which is contained in the first paragraph of section 4 which I read, may be reduced to so small a field, that it will be ineffective. I think that that claim and that fear are not well founded. If the committee will read the so-called home rule law, chapter 247 of the Laws of 1913, they will find in section 20 a grant of specific powers made by the Legislature to all the cities of the State, in which those powers are enumerated in twenty-three different articles. Nobody can read that law without seeing that the cities under this amendment will control an immense range of their own activities as to which it will not be necessary for them to come to the Legislature at all, unless, as is the case in the city of New York, unfortunately, so many of the little details involved in the operations of the cities are provided for in the charter, so that the charter has to be amended. It is interesting to point out that this home rule law of 1913 has been largely ineffective for two reasons. First, because of a doubt whether the Legislature had the capacity, the legal capacity, to devolve upon the cities so much local power of legislation. I submit that with the grant contained in section 4 of this amendment, if that were to become a part of the constitution of the State, any weaknesses found in this law of 1913 from that cause would certainly be avoided. This law has failed for one other reason. The cities generally are not so organized that by their charters they can do the things that they were given the power to do under this law. Whenever the case would come into the courts, the courts have held that the cities are bound to use —

Mr Low — The courts have held, I think, universally, that the cities are constrained by their existing charters to use the machinery that they have.

That, Mr Chairman, is the reason that I said a little while ago, that any home rule provision that is to be effective and that is to give real relief, and to give it quickly, must empower the authorities of today to unlock that door. New York City, especially, and the other cities measurably, all alike, are tied down by little withes and small requirements that might just as well be swept aside as not, ought to be swept aside entirely, and yet they are there, and the cities, without some charter amendment, are powerless to relieve themselves of those embarrassments. I think it is clear that the provision contained on page 3, permitting the State to pass special laws relating to the government of cities that are not within the powers granted to the cities by this article, still leaves the cities an undiminished control of everything that relates to their property and local affairs, and so much of their government as is not affected by the joint interests of the State and the city in the government of the city. Now, with the permission of the convention, I will return to a more careful study of the wording of section 4. I hope I have made it clear that there is a very distinct and a very broad grant of power to the cities which is not taken back and diminished by any other amendment contained in this section 4.

Let me then call your attention to the last clause of that grant: "Every city shall have exclusive power to manage, regulate and control its own property, business and local affairs, subject to the constitution and to the general laws of the State applying to all the inhabitants, or applying to all the cities or counties of the State without classification or distinction."

Subject to the constitution and to the general laws of the State applying to all the inhabitants or applying to all the cities and counties of the State without classification or distinction. I have already pointed out that the phrase "general law," by itself, would give very little relief because a general law might be so drawn as to apply to the city of New York alone. Now, why do we say the general laws of the State applying to all the inhabitants, or applying to all of the cities or counties of the State without classification or distinction? Perhaps I can make that point most clear by referring to the suggestion contained in the mayor's amendment which read that, subject to the constitution and to the general laws of the State applying in terms and in effect to the entire State, the cities were given the grant contained in that bill. I pointed out in my introductory remarks that one of the characteristics of any measure that is to succeed in the circumstances of New York State's cities must be to leave power enough somewhere either in the cities or the State to deal with either problem. Now, the mayor's amendment, while that gave the cities powers over salaries, very broadly, not only over the city salaries but over all salaries paid directly or indirectly out of the treasury of the city, it specifically exempts the salaries of the courts of record. It is a curious circumstance that among the laws passed this year relating to the city of New York are two providing that the salaries of two justices of the Supreme Court who had died during the year might be paid to their widows. I suppose that without that law that could not have been done. Now, while it may be possible to pass a law affecting the whole State, that the salaries of justices of courts of record dying should be paid to their widows (they might not have any widows), at any rate in this particular case it had to be dealt with by special law. The proposed law went in this case to the city and it theoretically would go to the city under this amendment for its approval. But there is a matter as to which the State must act, and ought to act, as the law now stands, and unless it could have passed these special laws, great injustice would have been done. I want to point out to you that while theoretically it is entirely possible to get general laws passed on questions like that, it can not be done quickly. It takes time. And if there is difference of opinion between the cities it might be difficult to get such a law at all, so I return to my proposition that there must be somewhere if not in the city, in the State, the power and authority to deal with actual problems that everyday life brings.

In order to avoid the stringent limitation which the mayor's conference proposed on state action, that it could pass no law at all which did not apply to city and country alike which would be binding on a city, the cities committee had used this phrase that the cities' exclusive power is subject to the general laws of the State, applying to all the inhabitants or applying to all the cities and counties of the State without classification or distinction. Every one, I think it may fairly be said, admits that the State should have the power to establish general policies for all the cities of the State where such policies are needed and as to that I think it is only a difference of choice between the terms of expression. Our qualification is somewhat larger than that of most of the suggestions. Whether you say a law can be passed applying to all of the cities in terms and in effect in the same way, or whether you say it shall apply to all of the cities without classification or distinction seems to me to be a choice between terms and not to involve a question of principle.



I hope I have already said enough to show the convention that no grant of power less than the amendment gives will adequately meet the situation. Such a grant, theoretically, could be given through the Legislature but it would have to be just as great a grant as this, and therefore it seems to the committee in every way better that the grant should be made directly through the constitution to the city, and therefore be beyond the reach of being either recalled by the Legislature or being nibbled away by the Legislature. Let me ask your attention to the next subject. The amendment goes on to say "Such power shall be deemed to include among others; The powers and definition of the powers that are granted—it simply is for purposes which I shall allude to later. Such power shall be deemed to include among others: (a) the power to organize and manage all departments, bureaus, or other divisions of the city government and to regulate the powers, duties, qualifications, mode of selection, number, terms of office, compensation and method of removal of all city officers and employees, and of all police and health officers and employees, and of all nonjudicial officers and employees attached to courts not of record, and to regulate the compensation of all officers not chosen by the electors and of all employees of counties situated wholly within a city, except assistants and employees of district attorney and except officers and employees of courts of record." We resorted to the use of paragraph (a) for two purposes; first, to make it perfectly clear that the whole question of city management and city organization is a local matter and not a matter of state concern; and, second, in order that by this means we might permit the cities, through the government of the day, to initiate amendments to charters and then to amend their charters at home without any necessity of coming to the Legislature at all. We have inserted in addition, to city officers and employees, police and health officers and employees. I have seen one criticism to the effect that if we had said nothing about the police and health employees, it would have been taken for granted that they were city officers; but that now, a doubt has been raised. Mr Chairman, I have read in Professor Goodnow's book a decision of a Massachusetts court, which says that policemen are not city officers at all, that they are state officers acting for the State in the city and through the city for the public convenience. I think if we had not used that clause there would have been very grave doubt whether our grant of power to the cities would have enabled them to control the organization of the police and health departments within those cities.

The convention will notice we have said nothing about education. We may have to. It depends upon the action of the convention on the proposals that have been submitted by the committee on education. The convention has already adopted an amendment declaring that education is a state function. If it goes on and adopts the second amendment that is pending, it is very clear the Department of Education, as a separate body politic, will practically be taken out of local control except as the locality may appoint the members of the board and perhaps determine on the size of the board and elect its members as the general laws of the State may provide. If that amendment should not be adopted it is possible that some reference may have to be made to the Department of Education in this paragraph "a" in order to make its relationships clear. . . . The reason why the officers



Herbert Parsons

and employees of courts of record are excepted is equally apparent. They are part of the administration of justice in the city, and it seems to be natural to leave the control of their salaries with the State. . . .

One of the amendments that was adopted was to give the superintendent of public education a vote in the board of education. Another, which was not adopted, was to provide that the union label should appear on all city printing. That is the reason, Mr Chairman, why I said that the assumption that the city will adopt the kind of charter that the enthusiasts think it ought to have is not well taken. The city of San Francisco rejected five charters before it finally got one that made it necessary to submit such questions as those to the popular vote. The cities committee was not unanimous, but was very nearly unanimous in believing that the cities of the State of New York, and certainly the city of New York, should not be exposed to an experience like that.

The subject was further debated as follows (Record, p. 2017):

Mr Parsons—Then does not that confine the laws in section 3 referred to on line 3, page 3, to laws affecting the government of cities so far as they are agencies of the State in the carrying out of the state business?

Mr Franchot—I am inclined to believe that the first part of your statement is correct, but the second qualifying phrase should not have been inserted in your sentence, I think; that is my guess about it, and it is impossible for any member of this convention to do more than to surmise, to figure it out as best he may; he will never know what he is doing; he will be acting in the dark, jumping at conclusions as to what he is doing. My guess would be that the courts will take refuge in the well-established distinction that refers to those powers which the city exercises in governmental capacity and those which it exercises in its private corporate capacity. That would be the easiest way out and the most natural assumption for the court to make, because there is embodied in our case law at this time that distinction which has been clearly made. I had a quotation from the case of *Lloyd v. The City of New York*, but it is not necessary for the benefit of the lawyers of this convention to call attention to the extreme narrowness of the field in which cities of this State have been held to be exercising powers in their corporate or private capacities. It has been held that they are not exercising governmental functions only when they derive some particular emolument as cities, as corporations, from the exercise of the particular power under consideration, and it is my contention that the courts, in order to solve something which is otherwise unsolvable, namely, the difference between "government" and "local affairs," will adopt that old distinction between action in governmental capacity and action in private or corporate capacity; and the result, therefore, of the particular method which the cities committee has adopted to preserve the suspensive veto will be the enormous narrowing of the field of "local affairs." There are set opposite each other two things; first, government; next local affairs. Can't you see that that will necessarily result in an enormous narrowing of the field of local affairs?

Mr Parsons—Do not the words "local affairs" broaden the power instead of narrowing it, and indicate that that power is greater than its mere power as a corporation? If it merely said "property and business," might it not come within the definition which you gave today, but when it says "local affairs," does it not give a broader definition?





Edward E. Franchot

Mr Franchot — I believe, as apparently you believe, Mr Parsons, that it is utterly impossible to distinguish between the local affairs of a city and its government.

Mr Marshall — Yet there is an intention to make distinction?

Mr Franchot — Now, in answer to the question of Mr Marshall, which I was glad to have you put, although not in parliamentary form, it seems to me that there is an attempt to make a distinction where none exists, and that it will result in nonplussing the courts, and it still further adds to the elements of doubt, confusion and uncertainty, in which the grant of home rule powers to cities is enshrouded in this proposal; and, still further, it seems to me it justifies any member of that committee in dissenting from what the majority agreed upon as a compromise. I feel so strongly the necessity of meeting what is admitted to be the large demand for the grant of larger powers to cities; I am so thoroughly convinced that the only method by which existing evils complained of can be obviated is by such a broad grant of power; I feel so strongly the justice of the claim of the great city of New York that, being deprived of commensurate control in state affairs, it therefore should be conceded a large measure of control over local affairs, that I would be intellectually unfaithful to myself if I could lend any support to this particular proposal now advanced by the committee on cities.

Mr Wickersham — For the purpose of removing one criticism that has been made to a part of this section, I move to amend section 4, now under consideration, by striking out on page 6, line 12, the words "framework of its" and inserting in lieu thereof the words "the numbers, power or method of selection or removal of the elected officers of the city," so that that will read: "and which does not change the numbers, power or method of selection or removal of the elected officers of the city government."

The Chairman — Will you be good enough to send the amendment to the desk?

The Secretary — By Mr Wickersham: On page 6, line 12, strike out the words "framework of its" and insert in lieu thereof the words "the members, power or method of selection or removal of the elected officers of the city."

Mr J. L. O'Brian — Mr Chairman, I was one of the members of this convention who introduced a measure of home rule which has since been termed by everybody else "too radical!" I was the member of the cities committee and of the subcommittee to frame this proposed amendment, and I signed the majority report. I feel that if I can explain to this convention the difficulties that the committee, including myself, sought to remove in framing this proposal, we will all perhaps get a clearer idea of the proposition, and it may be that we can improve it. The demands which were made of the cities committee were three, and the demand for home rule, which is sometimes very vaguely expressed, reduces itself to three demands: First, that the Legislature be prevented from interfering with the private and local affairs of cities; second, that cities themselves be given the power of making their own charters, so far as their own private or local affairs and business are concerned; and, third, that we pass some amendment which will reverse the present rule of strict construction. As the corporation counsel from Syracuse put it, every time that that city desired to commence a new under-

taking he looked through the city charter and he looked through the constitution and he looked through the general laws, and if he found no specific authority in any of those three documents, then he knew that the city could not perform that necessary undertaking, but must go to the Legislature of the State. The demand is that this rule of strict construction be reversed.

I am in support of the proposition before the House because I honestly believe that it does meet all three of those demands. It does not grant so sweeping a measure of home rule as I myself asked for; it does not permit a city to free itself entirely from state control, but it does grant to cities, as I think I can point out to you, a practically exclusive grant in a field of local control where now and where in the past the chief pinch has come on cities. It does reverse the rule of technical construction, and it does, in my opinion, effectively prevent interference by the Legislature in local affairs. I am not one of those who would advocate a proposal with such zeal that he would be blind to its faults, and I shall be perfectly frank in pointing out to you the two matters in this proposal which I think, it may frankly be said, create some doubt as to the extent of the power. I am going to do that, first, because those defects are there, if they are defects; and, secondly, in the hope that this convention, by putting its mind upon those two propositions, may improve the proposal of the committee on cities. No member of the majority of that committee believes that this is a perfect document, but I think every member of the majority believes that it is an adequate and satisfactory reply to the demands of the cities of this State for home rule. And I think I can demonstrate to you now that this grant, and the form of this grant, is in the nature of a direct evolution from previous conditions governing charter-making in this State, and that there is nothing revolutionary in it. There are many fallacies urged on the subject of home rule. One man would have you believe that all cities should be governed alike. That is not only in itself an absurd idea, but that has never been the rule in the State of New York. The cities that have come the nearest to that category have been cities of the second class, under their admirable so-called uniform charters; and yet, no two cities of the second class are governed exactly alike because every one of those cities has come to the Legislature and had certain exceptions made in its favor from the control of the original uniform charter for cities of the second class. The other chief fallacy is the idea that plainly exists in the minds of many people and in the minds of some members of this convention, that the Legislature itself makes charters. The Legislature grants charters, but so far as I am aware, the Legislature never framed a charter for a city. The framing of charters has always been done, in the first instance, at home, either by some group of individuals who got together or by some local commission or by the corporation counsel. I think if you could see, those of you who have not been members of the Legislature, how charters are framed and passed upon, you would have very much less fear and doubt about the proposal now before you. I had the good fortune in earlier and happier days to be a member of the Legislature and to sit for three years on the committee on cities of the Assembly and during that time I—save the mark!—helped grant ten cities in this State their charters. Those charters consisted of large packages of wood pulp, which were brought down here by the local member; he was asked if it was satisfactory to every one; if he



said that it was satisfactory, the chairman of the committee would usually read the charter to make sure there was no dynamite in it and then the committee would pass it. If the charter or an amendment to a charter was introduced by some unpleasant individual who did not get along with everybody, why, that charter or that amendment so much desired by the people at home, sometimes would not get far.

Mr F. Martin — Is that true of the Gaynor charter, where Mayor Gaynor prepared a charter which was satisfactory to all of the people of the city and which he tried to pass through the Legislature of this State?

Mr J. L. O'Brien — Mr Chairman, I am speaking of my personal experience in the Legislature; that was not during my time, sir. My point is this, that charters have always been framed in the localities. They have always been brought down here to the Legislature, and, with some amendment on the part of some interested person in the Legislature, the general run of events has been to have the charter passed. There is nothing revolutionary in the idea of an amendment to a charter being prepared at home and being brought down to the Legislature to be nullified, and there is nothing foolish nor absurd in that idea. The evils that have surrounded the present system have been so adequately set forth by Senator Foley, by Mr Franchot and by Mr Justice O'Brien, that it is unnecessary for me to go into them. The only question we have before us is how to meet these demands and how to take care of cities in a manner which will conform to our ideas of preserving the sovereignty of the State. The proposed grant which you have before you endeavors to accomplish that result. There are, broadly speaking, three ways in which you may accomplish that result of granting home rule. One, as alluded to by Mr Franchot, is to simply empower the Legislature to grant to cities the home rule in such measure as they may see fit. That can scarcely be said to be a constitutional grant of home rule, and, in my opinion, that does not answer the demand that is made, and properly made, by cities. Another method would be to grant cities outright a certain amount of control, without any reference to legislative control; that is equally objectionable to many people because, as it has been argued over and over again, that might enable cities to become provinces within the State. How, then, can we make the grant, giving the city power over its local affairs of business, protecting it from interference in that field, and at the same time reserving to the Legislature the right to protect the sovereignty of the State. This measure has been called a compromise. It is a compromise in so far as it is neither one extreme nor the other. But it is a perfectly sound working principle which will operate and which I believe will accomplish the result. If you grant to a city the right to make its charter and provide that that charter shall then be submitted to the Legislature for such approval or disapproval as the Legislature sees fit, you are giving to cities nothing but what they have today, because that is the situation today. If, on the other hand, you give exclusively to cities the right to initiate charter legislation, subject in certain particulars to no restrictions except the general laws of the State, subject in other particulars to nullification, on the part of the Legislature, I think you provide an adequate working theory on which your plan will operate.

In doing this, there are manifest difficulties in the way, and the first and chief difficulty is this: How are you going to define the field of affairs



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which shall be exclusively within the control of the city, subject to general laws of the State? How are you going to define the field which shall be left to the State? That is the problem that underlies every single one of the amendments which has been introduced in this convention, except those amendments which propose to authorize the Legislature to delegate these powers, and which I do not consider to be home rule proposals. The measure under consideration seeks to make that distinction, and you will see from the debate which has already taken place how very difficult it is to meet the views of all concerned. For example, Senator Foley said this morning that the method adopted by Mr Franchot, the enumeration of powers — enumerating those that are in the city and those that are in the State — was satisfactory to him. Justice O'Brien says that the vice of the present bill is that it seeks to enumerate certain functions. He would make a simple grant of home rule, leaving those matters to the State which are of concern to the State, and those matters to the city which are of concern to the city. From that viewpoint this is an ideal method of granting home rule — if you are prepared to say that you will leave to the courts the determination of every question which will rise on such a grant of power, and if you are prepared to say that municipalities of the State shall have absolute and unhampered control over certain local affairs, without any impediment on the part of the State and with no power on the part of the State to interfere with those affairs. The measure before the House seeks to harmonize on a logical basis all these demands by recognizing that there are certain private business affairs of cities which concern no one else in the State, and by providing that, as to those matters, the city may make amendments to its charter without going to Albany and without consulting anyone. Then, over and beyond that, there is another field of local affairs which, although they are purely affairs of that city, yet may affect the citizens of that city in an objectionable manner. For example, it might be that if the local authorities had unlimited power to modify their charter as to their local affairs, they would seek from a partisan motive, after an administration was elected, to wipe out whole departments of the city government and create whole new departments of the city government. The committee on cities believe that that would be a dangerous power, and they therefore have provided in this amendment that powers which belong in that category, where the city may initiate the charter amendment, that kind of an amendment which affects the framework of a city government must be submitted to Albany, where, unless the Legislature acts within sixty days, it will become law.

Then the committee sought in the last place to reserve to the State clearly the power to exercise those functions, which, while they might affect a particular city, were, nevertheless, matters chiefly of state concern. The two spots in this bill on which, if you boil it down, the main criticism centers is the use of the words "framework of government" — that phrase is the one which has been attacked by all the speakers who have spoken on this floor; and on page 6 the proposed bill provided that every amendment which related to section A, that is, the power to manage bureaus and departments and fix salaries, and so forth, which did not change the framework of government, but which concerned the fixing of compensation and management of bureaus, etc., might be dealt with there in the locality without any reference to Albany.



The attack is made on this phraseology on the ground that the expression "framework of government" is a new and novel expression; that it may mean one thing and it may mean another, and to offset that criticism, the gentleman from New York, Mr Wickersham, has now offered an amendment which, offhand, strikes me very favorably, by providing that those amendments to a charter which fall within this grant of local power, but which do not affect the numbers, or the functions of departments, or the powers, or the method of removing elective officers, might be dealt with in the locality, but other matters would have to be submitted to Albany for nullification if the Legislature chose to act. If anyone in this committee can suggest any other phrase that will accomplish the result which the committee on cities aims at, I am sure if that phrase is better, it will help this bill and it will remove one of the elements which I am frank to say does to a certain extent present some doubt in the matter of construction. There is, I would have you believe, gentlemen, no such multitude of perplexing legal questions bristling in this bill, as you might have been led to believe. The answers to these two questions, the one I have just asked and the one I am about to ask, solve practically all of these legal questions that have thus far been raised. The other legal question on which I will ask the convention to place its attention is the use of the word "government" in line 4 of page 3, and if any member of this convention can suggest a clearer expression of what the committee intended to say, I am sure the committee will be glad to have that suggestion. But, let me state first what the committee on cities was endeavoring to do. The committee was endeavoring to place within the scope of local action the control of all affairs, business and property of the city which concerned the city alone, and it intended to leave to the Legislature the power by special act, subject to the suspensive veto, to affect a city in a matter which would be primarily of state concern, as a State, as distinguished from a matter of local concern. In my opinion as a lawyer, the committee succeeded, and I see no such mare's nest as the preceding speakers have seen. For this reason: that we start this grant with a grant of exclusive powers to cities, so far as their property, business and local affairs are concerned. When we come to the Legislature we say that laws relating to the government of cities, applying to all the cities of the State, and so forth, *and not within the powers granted to cities by this article*, are defined as special laws.

The preceding speaker will have you believe that when the committee wrote that expression "government of cities" that instant they blotted out the exclusive constitutional grant of powers to cities they had already made, whereas, in my opinion, the contrary is the case. The old constitution, in defining laws, used the words "property, affairs or government of cities." We took out of that expression "affairs and property" and placed them over within the exclusive control of the city, leaving to the Legislature whatever was included in the word "government," and not included in the exclusive grant which we have just made to the city. In my opinion, the test is this. Are there any functions of government which are not clearly the private affair and business of the city? If there are, and there certainly are, those are the functions of government which are left in the State to be exercised by special law; and I believe that a canon of interpretation which the courts would apply in construing this section would be found in the fact that by

constitution we grant to cities, in express terms, subject to the general laws of the State, those powers over their business and property and local affairs, and the courts, in my opinion, would be bound to so hold.

Mr Donnelly—Do you understand the term "business" modifies "affairs," or do you understand it to mean, as you just expressed it, "business, property and local affairs?" As I view this language used in this amendment, it would seem that the courts might construe that the term "business and local affairs" would mean business affairs and local affairs, whereas if it is modified to read "its own property, its own business and local affairs," then there would be no doubt upon the subject, just as you have expressed it. What is your construction upon that?

Mr O'Brian—My construction of it is this, simply what I have already said: I do not think that the phraseology that you have cited would change it. I am simply trying to have the convention understand the difficulty which presented itself to the committee, and I say that I believe that this use of the word "government," when it is limited by saying that government not within the powers already granted to cities, clearly makes the distinction and clearly marks both the State and the municipal lines.

Mr Cobb—Under this provision on page 3, which permits the State to pass special laws relating to the government of cities, would they have a right to pass a law amending the charter of a city?

Mr O'Brian—In my opinion, no.

Mr Cobb—Then, suppose that a charter of a city trenched upon a subject that touched the interests of the State, as in the matter of public health, for instance, would the State have a right to pass a law that would affect or amend the charter in that respect?

Mr O'Brian—Mr Chairman, you mean, Mr Cobb, would the State have the power to pass a law—

Mr Cobb—A special law.

Mr O'Brian—It would, in my judgment.

Mr Cobb—Then, if it amounted to an amendment of the city's charter, the city has not exclusive right to amend its own charter.

Mr O'Brian—On that construction, you are correct, because that is a matter primarily of state concern.

Mr Cobb—Where is that distinction which you now make; where is it contained in this law, and by what language?

Mr O'Brian—Because, as I have already stated. The word "government" can and does include something in addition to local affairs, and—local property, business affairs, of cities, and it does include such matters as you mention, matters of health, matters of education, matters of punishment for crime, and, therefore, under this clause, the Legislature would have the right to pass special laws which might have the effect of amending a city charter.

Mr Cobb—The word, or the language used on page 3 is that they may pass laws relating to the government of cities. I do not see as it makes any distinction or classification as to the kind of laws. The word "government" refers to the government of cities.

Mr Franchot—I think I have caught Mr Cobb's point. In answer to the question by Mr Cobb, if you turn to page 5, subdivision *b*, you will find the words "the power, as hereinafter provided, to amend its charter or any local or special law relating to his property, business or local affairs of cities."

Mr Cobb—The words “of cities” do not appear on my copy.

Mr Franchot—It ends with “local affairs.”

Mr Cobb—Yes.

Mr Franchot—That goes back to the controlling language on page 4, “Such power shall be deemed to include among others.” Now, it was the opinion of the committee, not mine, that in subdivision *b*, the power to amend the charter was only power to amend it in so far as it related to the property, business and local affairs of the city. In other words, the words “related to its property, business or local affairs” and, as a matter of grammatical construction on the part of the majority of the committee, qualified the word “charter” as well as the local or special laws. In my opinion it does not, but that was the intention.

Mr Cobb—Mr Chairman, I am simply trying to get information and perhaps I am a little slow in understanding. But, I can conceive, Mr O’Brien, that a law that related to the property, business or local affairs of a city, might also have a relation to the public affairs of the State.

Mr O’Brien—Yes.

Mr Cobb—Mr Chairman, and that the State might have an interest, and there might, if that happened, be some conflict between the two provisions. That is what I am trying to have made clear.

Mr O’Brien—Mr Chairman, I can only repeat what I have already said. Senator Cobb is quite correct in his inference that there is no explicit language setting forth the distinction to which he referred. It is simply a matter of interpretation of those phrases.

Mr Wickersham—Would not a substitution for the language under discussion, on page 3, the language in italics, of the following language, correctly impart the thought of the framer of the measure, and, perhaps, somewhat more clearly elucidate the idea?

Mr D. Nicoll—What page?

Mr Wickersham—Page 3, in lieu of the italics, beginning on line 3, and running down to the end of line 7, insert instead the words “laws not within the powers of cities granted by this article and not affecting the government of cities in matters of general state concern or applying to less than all the cities of the State, without classification or distinction, are defined for the purposes of this section as special city laws.” I ask the gentleman from Buffalo whether that phrase would not perhaps more clearly define the idea than the words in italics. I intend to offer it as an amendment at the appropriate time.

Mr Franchot—Is not the word “not” misplaced?

Mr Wickersham—That word is misplaced.

Mr J. L. O’Brien—Mr Chairman, with the word “not” stricken out, that phraseology exactly expresses my own view of this measure and, personally, I am very glad that that suggestion is made. I am simply trying to place before the convention the difficulties which present themselves to the committee. If these two difficulties can be removed, that is to say, if the word “framework” can be replaced by a more explicit phrase and if this definition can be made more accurate by explicit language, I can see very little grounds for objection to the phraseology of this measure.

Mr Low—May I ask the clerk to read the language of that proposed amendment? I did not hear it. Perhaps Mr Wickersham will read it.



The Chairman—Will Mr Wickersham again read the proposal for the benefit of Mr Low?

Mr Wickersham—If the delegate will yield for a moment, even though it is out of order, because we are technically discussing section 4. I will offer this as an amendment to section 3. I indicate where it is to be put in.

The Chairman—If there is no objection, the secretary will read the amendment.

Mr Wickersham—Mr Chairman, it may not be noted there but it should read to strike out the words in italics and insert in lieu thereof the words which the clerk is about to read.

The Secretary—Page 3, lines 3 to 7, strike out the words in italics and insert in place thereof the following: "Laws not within the powers of cities granted by this article, and affecting the government of cities in matters of general state concern but applying to less than all the cities of the State without classification or distinction are defined for the purposes of this section as special city laws."

Mr J. L. O'Brian—Mr Chairman, as a matter of offhand opinion, I think that that amendment would meet the point which was raised and, in my personal view, makes this bill very much clearer. Under the bill as thus amended, as I read it, the sole power of initiating changes in a city charter would rest within the city itself. The Legislature could not interfere with that power to the extent of initiating any legislation affecting a city, except that where the exercise of the power on the part of the Legislature was substantially a matter of state concern, the Legislature might act, subject to the suspensive veto of the city.

On August 14th the subject was again debated as follows (Record, p. 2065):

Mr Franchot—You are, of course, aware that the cases heretofore, in defining the distinction between what a city does in its governmental capacity and what it does in its private or proprietary capacity—in making that distinction, very few things have been considered to fall within the latter class.

Mr Marshall—I recognize that, and I do say that, in that sense, there is a limitation, a narrowing of the power. Of course, we can not, however, forget this one fact, that, as to the government of a city, matters which are purely governmental, it is exercising a delegated power of the State. Normally, the State governs all within its territory directly, and if a state were small enough it would not require any civil divisions at all—counties, towns, cities or villages. The state as one corporate, sovereign entity, would rule all and do all. But in view of the fact that our territory is large and our population is great, and that the interests in one part of the State are different from the interests in another, in the exercise of its governmental power, the State delegates those powers to the municipality. Yet, in so doing, it is merely parceling out a section or sections of its sovereign power, and that sovereign power is vested in the great departments of the state government, and, so far as lawmaking is concerned, it is vested in the Legislature—the Senate and the Assembly. Now, I can see a very good reason for having one rule apply to the exercise of those governmental functions, and another



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rule to apply to those proprietary, if you please, functions, or those functions which relate to property and local affairs. And even that distinction may be arbitrarily varied from by adding to the powers to be exercised under the phrase "property and local affairs" such governmental powers of the police department, the health department, and possibly education, although that is one of the questions which we have to deal with hereafter. At any rate, there is a legitimate grant for adding to the consideration of these local affairs the power to deal with the police, fire and health departments.

Mr D. Nicoll— I want to ask the gentleman a question with respect to his interpretation of the amendment in relation to a certain thing which occurred in the city of New York some years ago. You may remember it, and I want to know how that subject was treated of here. The board of aldermen of the city of New York had, as you know, for many years, considerable legislative power. They were the local authorities of the city of New York. The Pennsylvania road wanted to come to the city of New York, and they had to obtain the consent of the local authorities, then the board of aldermen. The board of aldermen differed with the Pennsylvania road. They had an argument on the question and could not agree. Thereupon, those who were interested in having the Pennsylvania road come to the city of New York started in to create a public opinion for the purpose of taking away from the board of aldermen their legislative powers and conferring them upon the board of estimate and apportionment. That was purely a governmental function.

Mr Marshall— Undoubtedly.

Mr D. Nicoll— That is an extreme case of going to the Legislature for the purpose of changing the government of the city when desired. Now, how is that restrained by this article?

Mr Marshall— It is not restrained.

Mr D. Nicoll— Not restrained?

Mr Marshall— In other words, the whole theory of this provision, as I take it, is that, so far as such a change in the government of the city of New York is concerned, it would be necessary to go to the Legislature. Before such a law could be passed, the locality itself, even the people of the locality by an amended charter could change that structure of government, that framework of government which relates to the powers of the board of aldermen as distinguished from the powers given the board of estimate and apportionment.

Mr D. Nicoll— Now, do you mean to say that if the people of New York had a convention and adopted a charter and gave legislative powers to the board of aldermen, the Legislature, notwithstanding, could take those powers away and confer them on the board of estimate and apportionment?

Mr Marshall— Under this system.

Mr D. Nicoll— Under this system. If that is the case, you might as well abandon it. You haven't got anywhere.

Mr Marshall— That would deal purely with a governmental affair, but in such a case as that the bar of the suspensory veto still exists. That is retained. A bill giving to the board of estimate and apportionment the power to grant franchises previously residing in the board of aldermen, would have to be submitted to the mayor of the city of New York, and if he disapproved it, it would not be a law unless the Legislature overruled his veto.



Mr Wickersham — Would not that be a change in the framework of the government?

Mr Marshall — It would.

Mr Wickersham — Therefore it would fall within the provision that "Every such amendment which relates to a matter specified under subdivision 'a' above set forth, and which does not change the framework of its government" — I am reading from page 6. This would change it.

Mr Marshall — It does not change the framework.

Mr Wickersham — But I say, reading the contrary to that, it would change the framework of government.

Mr Marshall — If it would change the framework of government, then it can not be exercised under this home rule power.

Mr Latson — May I suggest, I think it was the intention to provide that such a change as has been indicated by Delegate Nicoll would be accomplished through legislation in the board of aldermen, concurrent legislation in the board of estimate and apportionment, and concurrent approval by the mayor, with a delivery to the Legislature to await its approval or non-approval. If for a period of sixty days the Legislature was silent, this concurrent action of the three branches of the city would become operative. I think that was the intention. That is made more clear by the introductory words on page 6, lines 4, 5 and 6: "The legislative authorities of the city may enact amendments to the charter or to any special or local laws, affecting the property, business or local affairs of the city." That, again, excludes the government.

Mr Latson — Mr Chairman, may I direct the delegate's attention to line 16 of the same page, to be read as a part of that?

Mr Marshall — That intention may be there, but I can not see it. Please let me explain this language. You see, as it now reads — and that calls for one of my amendments — you say that "Every city shall have exclusive power to manage, regulate and control its own property, business and local affairs." Now there is a specific grant of power. That excludes government. Then it continues, "Such power shall be deemed to include among others:" those which are specified in subdivision "a," and then comes subdivision "b." Why subdivision "b"? I do not know, because it is not a logical subdivision, but for convenient dividing up of the sentences they call it "b." It reads: "The power, as hereinafter provided, to amend its charter or any local or special law relating to its property, business or local affairs." Then follows provisions for the exercise of this power, that is, by a general election or by the exercise of certain powers of the legislative authorities, but all those changes, whether at an election under a revised charter, or by virtue of amendments to the charter or existing laws made by the legislative department of the city, are limited and circumscribed by the introductory words, "The power, as hereinafter provided, to amend its charter or any local or special law relating to its property, business or local affairs." It does not include government and therefore it excludes any amendment with respect to the subject of government, jurisdiction over which primarily is retained in the Legislature, subject to the suspensory veto.

Mr Low — I would like to make a brief statement of fact, and then discuss the question as it affects the proposal.

Mr Marshall — Perhaps I might take a rest in the meantime.

Mr Low — Reference has been made to the granting of the Pennsylvania charter. That was acted upon by the board of aldermen and it was that in connection with that matter that the transfer of legislative authority as to franchises was made from the board of aldermen to the board of estimate. It was necessary to come to the Legislature in connection with that grant because it was essential to give a perpetual franchise to make the project practicable and that was impossible under the city's charter as it then stood. That was the motive for coming to the Legislature. There was one power which the board of aldermen had at the time which was transferred to the board of estimate in that connection and that was the power to change the city map. The franchise was presented to the board of aldermen and it was granted by them or with their concurrence. So much for that fact.

Mr Parsons — Is it not true that the Pennsylvania franchise was not granted by the board of aldermen until late in November or December or until after the agitation to which Mr Nicoll alludes had been started which looked toward taking from the board of aldermen its power to grant franchises? That is my recollection.

Mr Low — Well, the dates, Mr Chairman, are not sufficiently clear in my mind to answer. The fact is that the board of aldermen did act upon the franchise and did grant it. Now in regard to the bearing of this amendment on the transfer of such powers from the board of aldermen to the —

Mr D. Nicoll — Will the delegate yield? I think the delegate is in error but it is of no consequence whether he is right or I am right. I am only using that instance as illustrating the question of the governmental side.

Mr Low — I quite understand that, Mr Chairman.

Mr D. Nicoll — Only as an illustration.

Mr Low — That I am coming to, but, with all respect, I think my memory is correct. I was mayor at the time and was very closely connected with the whole transaction and it has been a very great source of pleasure to me to know that the franchise was granted through the board of aldermen during my term. Now, Mr Chairman, if I may have the delegate's attention, I would like to answer what he has in mind — how this plan would affect such a thing. If the delegate will notice that clause "C" on page 5, gives to the city as a part of its exclusive power, the power to amend its charter, etc. Therefore no amendment to the charter of the city could be made by the Legislature except by request of the city. In other words, the initiation of such a thing must come from —

Mr D. Nicoll — What line is that?

Mr Low — That is on page 5, line 3. So the Legislature would have no authority whatever to amend the charter of the city of New York, or any other city, except upon the initiative of the city itself. Now if the gentleman will turn to page 3 —

Mr Franchot — Mr Chairman, if I might be pardoned for interrupting just at that point, I would like to ask the delegate this question, whether it was not understood among the members of the cities committee that the meaning of that language in subdivision "b" was that the city should have power to amend its charter or any local or special law, in so far as the charter or local or special law relates to its property, business or local affairs, and in that respect only?

Mr Low—It seems to me, not. I think the grant of the power to make or amend the charter of the city is exclusive, but I was about to call the attention of the convention to page 3, to the clause which we have used in defining a special city law. That reads, as presented by the committee: "Laws relating to the government of cities and applying to less than all the cities of the State without classification or distinction and not within the powers granted to cities by this article are defined for the purposes of this section as special city laws." Now the purpose of that was to preserve to the city, among other things, the power to make and amend its charter, so that no city charter could be made or amended except upon the initiative of the city.

Mr Marshall—Is it not a fact, however, that the amendment of the charter relates solely to the subject of its property, business or local affairs and not to its government? I do not know what your intention may be; I am merely interpreting the language which is to be found here.

Mr Low—Of course, the question of the language, I admit, Mr Chairman, is very important and Mr Wickersham has presented another form of that language in the hope of making more clear what was intended, I suppose, by the committee. His proposal is, "Laws not within the powers of cities granted by this article and affecting the government of cities in matters of general state concern, but applying to less than all the cities of the State without classification or distinction, are defined for the purposes of this section as special city laws." In other words, I think it was distinctly the purpose of the committee on cities to do two things; in the first place, to give to the city the absolute initiative as to the amendment of its charter and the making of a new charter, so that the Legislature could neither make nor amend the city charter in terms except at its request. Now, if there be any matter as to which the city is acting, if you please, as the agent of the State, a matter of state concern as to which the State feels that it ought to pass a special law, it will have the authority to do that but subject to the suspensory veto. That is the idea, I am sure, that was in the mind of the committee.

Mr Marshall—The question really relates to the language of Mr Wickersham's amendment, and I should prefer to have him explain the language that he uses but I should like to get your interpretation of it, as to whether you understand that under that language it would be within the power of the city, through its legislative department or as the result of a public election, to change the general structure or framework of its government? I am using those phrases as they are used colloquially and not for the purpose of making any accurate definition.

Mr Low—You are speaking now of amendment no. 1?

Mr Marshall—No, Mr Wickersham's.

Mr Low—I am referring to amendment no. 2.

Mr Marshall—I am referring to amendment no. 2 also—"Laws not within the powers of cities granted by this article and affecting the government of cities in matters of general state concern."

Mr Low—What was your question?

Mr Marshall—My question was whether you considered those words, "government of cities in matters of general state concern," would apply to



the structure of the government or the framework of the government in a general way; as to whether a change may be made, for instance, from the present system of having a mayor and a board of aldermen or a common council to a commission form of government, or a change from giving the legislative or franchise-granting powers to the board of aldermen, to the board of estimate and apportionment, and the like?

Mr Low—I should think not, Mr Chairman, because all of those things would involve changes of the city charter. My understanding is that the Legislature can not change the city's charter, if this were adopted, except by the initiative of the city.

Mr D. Nicoll—Will the gentleman yield? You say "except upon the initiative?"

Mr Low—Yes.

Mr D. Nicoll—I just want to understand, because I can not make it out. You mean that under the present provisions of the constitution anyone wanting to change the charter, the city or anyone else, could go to the Legislature, pass a bill and then have it sent to the mayor, and, unless vetoed by the mayor, it would become a law?

Mr Low—That is the present scheme.

Mr D. Nicoll—That is the present scheme? Does the scheme continue just as it is?

Mr Low—I should say not. I should say that it was absolutely changed.

Mr D. Nicoll—How changed?

Mr Low—It is changed by giving to the city exclusive power to make and amend its own charter.

Mr D. Nicoll—That is changed then by the provisions of section 4?

Mr Low—That is changed by the provisions of section 4.

Mr Marshall—In my judgment, it is the very converse of what Mr Low suggested.

Mr D. Nicoll—What?

Mr Marshall—It is the very converse of what Mr Low suggested is accomplished by the language of section 4, and even section 3, as proposed to be amended, does not solve all the questions.

Mr Quigg—Mr Low, suppose a bill were introduced after the passage of this, were introduced into either House, do you mean to say it could not be considered?

Mr Low—If it amended the charter of the city, I should think it would be clearly unconstitutional unless it came up from the city with the approval of the board of aldermen, the board of estimate and apportionment and the mayor.

Mr Franchot—Are you aware of the implications of that construction, its effect upon the power of the city still by amendments to its charter to do anything with regard, for instance, to that which we all admit is of state concern, namely, education, in that the regulation of matters which will hereafter be considered to be of state concern is now almost entirely in the charters of cities? So that if the Legislature could not change the present charters of cities with respect to matters which will be held of state concern, it would be utterly powerless to take care of matters of state concern under the provisions of section 3 of this proposed amendment? It seems to me

that the conclusion—I would like to ask the gentleman's opinion—that the conclusion is necessary that the power to amend the charter conferred upon the municipality is limited to amendments of those provisions of the charter which relate to and regulate its property, business and local affairs. Otherwise, haven't you tied the hands of the Legislature absolutely by this provision?

Mr Low—It does not seem so to me, Mr Chairman, in the slightest degree. I am very sure that the intention of the committee on cities was to make it impossible for the Legislature to amend the charter of a city except in the method suggested, upon the initiative of the city itself. Now, of course, it depends on what the convention does with the education article, which is still pending, what the situation would be as to education, but my impression is that that calls for the dealing with the cities on the question of education by general laws. The State lays down its policy. Now the city of New York and most of the other cities—not all of them—have a board of education which is not a part of the city government. It is a separate body corporate and politic, and I am not sure that—

Mr Franchot—Is the gentleman aware that that matter is now fixed and regulated in the charter of the city of New York?

Mr Low—Yes, I am perfectly aware of it; as to certain points, it is fixed and regulated, and I should say, as to those points, the State could not change the charter of the city of New York. That determines the size of the board, the method of its selection and all the rest of it. If the State wants to deal with those questions, it must do it by general law and say that the board of education in all cities must be selected in such a way or by alternate ways, or that the cities can or can not have authority to determine the size of their boards of education. The State now determines by general law what are the standards for a school teacher. On the other hand, if anything should happen in connection with the work of the board of education as to which the State felt that it must interfere because it was a matter of state concern, my understanding is that it could pass a special law directed to that thing, which would be subject to the suspensory veto.

Mr E. N. Smith—Yesterday I propounded to Mr O'Brian this question: Can a city adopt a charter taking to itself powers not within the general grant? He answered that question in the negative. Now I understand that your answer to that question is in the affirmative.

Mr Low—Not in the slightest degree.

Mr E. N. Smith—In other words, then, if I may ask another question, the matters as to which a city may adopt a charter would be confined to those grants of powers which are contained in this article?

Mr Low—Which are contained in this article, and which are contained in its present charter. I do not suppose that this article takes from any city what is already in its charter. It certainly was not intended to do that. It was intended to start with the charters already in existence and having grants of power more or less broad at the present time and I should be very much surprised to learn that there is anything in the proposal of the cities committee that would at this time, or at any time, either immediately or later, take from the cities, by virtue of this grant, any power that they now have.

Mr D. Nicoll—If the plan or method of amending the city charter in

section 4, by having the amendment first passed by the aldermen, then the board of estimate and then approved by the mayor, does go to the Legislature and become a law unless the Legislature acts upon it, what is the use of continuing that other provision which we adopted in 1894 with regard to special city laws? Why make two methods of amending the charter?

Mr Low — Mr Chairman, my answer would be that I do not think that the provision in regard to special city laws does make a second method of amending a charter. If it does, it was not intended to and the language must be more carefully studied. The reason, as I tried to point out to you yesterday, for preserving in the State the right to pass a special city law is that the variety of interests represented by the cities of New York State is so great that I doubt the possibility of dealing in a statesmanlike way with every question that may come up, by general law. My hope is that more and more, if this amendment is adopted, the policy of the State as to cities will be determined by general law, as to education, as to assessment, as to taxation, as to the control of public utilities, as to all the questions in which the cities have a common interest and where the policy may be the same. But I ask the delegates to notice this: The present state constitution, under the amendments suggested by the cities committee, is obliged to make, in the section which deals with the debt limit of cities, special provisions for the city of New York. We are obliged to make, or give the Legislature the authority to make, special arrangements for small cities, in order to provide as to their debt limit and the limit of taxation, because, although section 10 of article 8 limits the amount that can be laid by way of taxation upon cities of 100,000 inhabitants or more, it does not touch the small cities at all; and we were informed, when we suggested making it uniform, that the rule would not fit the smaller cities. Now, Mr Chairman, the thought of the committee was this, if I correctly interpret it: If the state constitution is obliged to deal in a special way with the city of New York, with the larger cities, on such questions, what ground is there for believing that in the future nothing will happen as to which statesmanship will require the State to address itself to a similar problem? What we wanted to do was to leave the State in a position to deal with the problem on its merits and not to confine it to passing general laws which may fit some things and not fit others. It was not intended in the least to permit the State to modify city charters except at the request of the cities.

Mr D. Nicoll — I think you pointed out yesterday, as you have said many times before, that the great trouble in the last twenty-five years has been in the constant changes by the Legislature in the charters of the cities. Now suppose, after this constitution is adopted, somebody wanted to abolish the office of chamberlain, we will say. That office is related to the framework of the government of cities. Could you abolish it by a special city law?

Mr Low — I think as this reads, as one of my illustrations used yesterday, that would be a change in the framework and the city must initiate it. It must be adopted by the board of aldermen, the board of estimate and apportionment and the mayor.

Mr D. Nicoll — And it could not be abolished except on the initiation of the city?

Mr Low — Absolutely not, nor could any other department of the city. I understand that the power of amending and changing charters is taken away

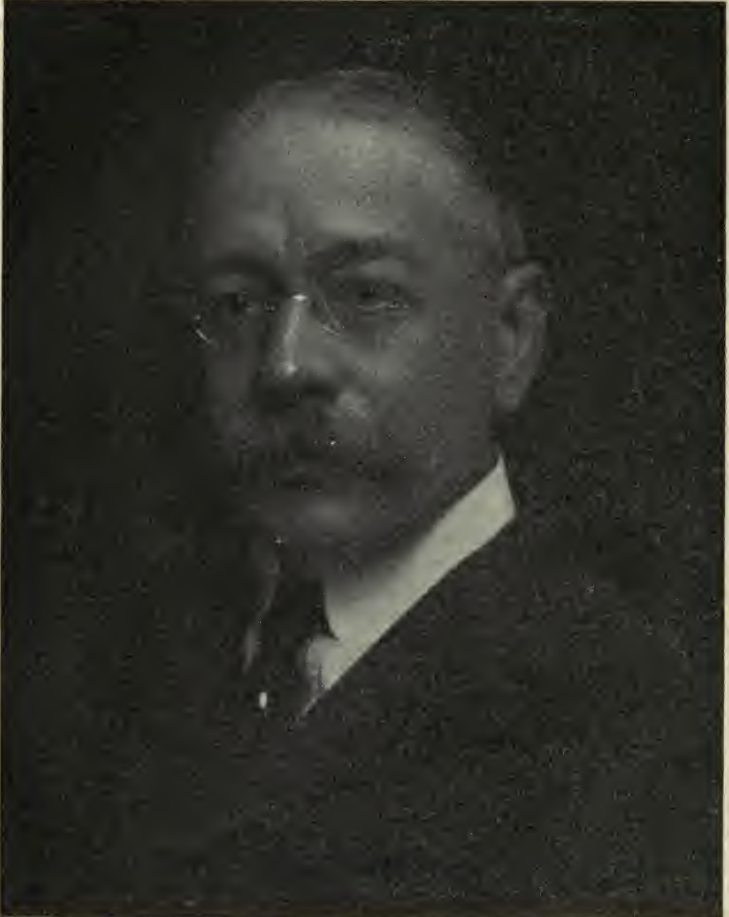


from the Legislature absolutely by this provision, except on the initiative of the city itself.

Mr Marshall—I would like to ask this one question, whether that interpretation is not diametrically opposed to the interpretation which was given by Mr O'Brian yesterday to these provisions? I understood him to say, so far as it related to government of the cities, that being a part of the sovereign power, the right of initiation was in the Legislature, subject to the suspensory veto; but, so far as those features of a city's activities are concerned which relate to its property, business and local affairs, in that respect it was necessary to proceed in accordance with the charter and on the initiative of the city as provided in section 4. Now, both of those propositions can not be correct and it would seem to me, to give due weight to all the language, that Mr O'Brian's interpretation must be the correct interpretation of that language.

Mr Low—Mr Chairman, I am not a lawyer and I may misconceive the legal effect of the language, but I know what was in my mind, and the gentleman who listened to my statement yesterday must appreciate that I stated then just what I have stated now, that the proposed cities committee's amendment made it impossible for the Legislature to take the initiative in the making or amending of charters. Now I thought what was intended by the amendment in relation to special laws—not at all that it was intended to give the Legislature the opportunity or the power to amend charters as they are now found in existence or new charters that may be regularly adopted. I look upon that as a part of the grant already made to the cities, which is an exclusive grant, but I do believe that if any situation should arise, for example, affecting the police force of the city of New York or the board of education or the health department which required special action by the State, it could take that special action under this clause relating to city laws. It never was my thought for a moment that, under this exception in section 3 as to city laws, the State was given the opportunity to change charters or to amend them in the slightest degree. If it does, I think we want to overcome it.

Mr Wickersham—Mr Low, it seems to me to be perfectly clear from this language that your interpretation is the only correct interpretation of the amendment. I do not see how anybody else can reach a different conclusion. Now, just consider for one moment what this language does. I take it up as a new proposition because I have not been in the committee, but here is a grant to the city of power, among other things, to amend its charter or "any special or local laws affecting the property, business or local affairs of the city." Now you have got a provision here on page 3 of the bill which says that "Laws relating to the government of cities and applying to less than all the cities of the State without classification or distinction and not within the powers granted to cities by this article are defined for the purposes of this section as special city laws." Then there is a provision for the enactment of special city laws by the Legislature. Farther on in this next section is the regulation of the exercise by the legislative authorities of the city of the powers devolved upon them by the article. Generally speaking, they may enact amendments to the charter or any special or local laws affecting the property, business or local affairs of the city; and, generally



George W. Wickersham

speaking, these enactments, when approved by the mayor and board of estimate and apportionment, become final. But if the enactment changes the framework of the government, then it has got to be submitted to the Legislature of the State, which is given a sixty-day opportunity to nullify it. Therefore, the power to amend the charter is vested in the city, to be exercised by the city, subject only to the power of the Legislature to overrule the city if it chooses within sixty days. Now is not that, Mr Low, your interpretation?

Mr D. Nicoll — One moment. Will the delegate yield? And subject also to the power of the Legislature to pass special city laws?

Mr Wickersham — No, I do not understand anything of the kind. That is precisely what it is not. If you will go back — those special city laws apply to things which are not within the charter of the city.

Mr D. Nicoll — They don't here; they may in another amendment.

Mr Wickersham — I am speaking of this bill. Within the powers granted to the city there is the power to amend its own charter, and a special city law can not operate within the scope of the power granted to the city.

Mr D. Nicoll — The special city law must relate to the city?

Mr Wickersham — Yes, but it does not amend a charter.

Mr D. Nicoll — What else can it relate to?

Mr Wickersham — There are many things. It may relate to a city law that does not amend a charter. A charter may be wholly silent on some subject which is covered by a law relative to the subject. But the Legislature can not deal with that subject except by means of this special city law, and as to that, the suspensory veto is vested in the mayor.

Mr Wickersham — I merely asked Mr Low a question. Mr Low has the floor and it is only by his courtesy that I am asking the question. I only wanted to know whether I correctly interpreted, from his point of view, in my statement what seems to me to be the only correct interpretation of this language.

The Chairman — Mr Low has the floor. Does he desire to answer this question before another is asked?

Mr Low — Yes, I think I had better answer one question at a time, if it is agreeable to the convention. Mr Wickersham has interpreted the proposal exactly as I understand it, and it was precisely in order to preserve the initiative to the cities in the amendment of their charters that, in this matter relating to special laws, we limited the authority of the Legislature to passing such laws when they were not within the powers granted to cities. Among the powers granted to cities was the right to make and amend their charters. Now, perhaps an illustration may serve. Take the police department, which is undoubtedly a department where the city acts as the agent of the State — as I believe it to be. I do not think that the Legislature by special city law could change the form and management of the police department in any city under this amendment. I think, on the other hand, if the Legislature made up its mind that in a certain city the police department was not functioning well and that it was of so much more importance to the State that the State itself should administer the police affairs there, it could do it under a special law.

Mr D. Nicoll — Under what?

Mr Low — They could pass a special city law taking charge of the police department in any city.



Mr Wickersham — In other words, your thought there, I take it, Mr Low, is that if the Legislature choose to say that in all cities of the third class there should be no police department but that the state constabulary should perform the functions of the police, that would be within the functions of a special city law?

Mr Low — I think it would be, yes. I think that the State can do those things that it feels it ought to do relating to these state functions, by special city laws, but it can not do it by changing a charter.

Mr D. Nicoll — Can the State change the constitution of the police department so as to give us back our four commissioners?

Mr Low — I think not, except on the initiative of the city. That is precisely what I understand to be covered by granting to the city.

Mr D. Nicoll — Nor can the State interfere with the police department of the city of New York?

Mr Low — If there is anything which is not touched by the city charter in regard to the police department, I think the State might pass a special law about it, or if the police department was not functioning well.

Mr D. Nicoll — What do you mean by that?

Mr Low — If the situation was so serious that the State of New York would say to itself, "We will do as Missouri does" — Missouri is a home rule state and runs the police departments of St Louis and Kansas City. Massachusetts runs the police department of Boston. I do not think there is anything in this article to prevent the State of New York from doing the same thing.

Mr D Nicoll — Then, if, in the judgment of the Legislature, the police department of the city of New York was not functioning well, it could abolish the police department and establish a constabulary of its own?

Mr Wickersham — No.

Mr D. Nicoll — Is that so?

Mr Low — I should say that it could, subject to the suspensory veto.

Mr Wickersham — I beg leave to differ with his interpretation entirely. If the charter contained a provision creating a police department and that was a part of the city government, then the change of the framework of government to that extent is exclusively vested in the city. The power of the Legislature is taken away from it because section 4 opens with the grant that "every city shall have exclusive power . . . Such power shall be deemed to include . . . The power, as hereinafter provided, to amend its charter or any local or special law relating to its property, business or local affairs." Now if this has to be done by an amendment of its charter, exclusive legislative power over that subject is vested in the city to be exercised, in case it affects the framework of its government, in conformity with the provision which requires it to leave its amendments with the Legislature for sixty days, subject to its nullifying veto. I do not understand this to leave it free to the Legislature to abolish any department of the city government or to make any other amendment to the charter of the city except on the initiative of the city. In order to cover the whole field of legislation affecting cities, the provision is that a special local law, which is defined for the purposes of this article, may be enacted by the city, but that must be something which deals with a subject which is not already in the charter. If

you start out with a charter which had received proper legislative approval and becomes a charter under the terms of this act, then you have got an exclusive grant of power of what is contained in the charter, to be changed only at the instance of the city and in the method set forth in this bill. That is my interpretation of this.

Mr J. L. O'Brian — Mr Chairman, I think the question suggested by Mr Nicoll is the most valuable contribution that has been made to this argument because it does bring up very sharply what I think fairly is an ambiguity although I had not seen it myself in quite the sharp light in which he presented it. Now my interpretation of this measure differs from that of Mr Wickersham and I still adhere to the view which I expressed yesterday. While I did not draft this measure, I had something to do with it, and the fact that so able counsel as Mr Wickersham sees the language in a different light certainly brings up the point that this power should be made clear.

As I view the conundrum which presents itself, it is this: We have granted in this act control to cities over their property and local affairs. We have left to the State power to enact special laws relating to the government of a city, which do not trench upon that exclusive field. Now, then, is the franchise-granting power part of the business, property or local affairs of a city? If not then the city has the exclusive power and the Legislature may not interfere.

Mr Wickersham — Is not that a totally different question that you are raising there? You are raising the question of whether or not the power to grant a franchise is one of the powers conferred upon the cities which they may embody in their charter.

Mr O'Brian — No; that is not before us.

Mr Wickersham — Then I will leave that. The point is that without now undertaking to state what is in the charter, the discussion which has been proceeding here has been whether or not the correct interpretation of this measure is that the charter, with whatever is properly contained in it, is subject to legislative interference except on the initiative of the city itself. That is the proposition we have been discussing.

Mr J. L. O'Brian — Now, then, it is my view of this document that when the city was granted power to amend its charter or to revise its charter, that was not an affirmative, substantive grant of power by which the city, when it amended its charter or revised its charter, could reach out beyond the exclusive power here conferred and take unto itself other powers. I understand that is the question before the House.

Mr Wickersham — Surely.

Mr J. L. O'Brian — And on the second page which Mr Wickersham read, on page 6, I think, the language does give color to Mr Wickersham's interpretation of this, that the legislative power of the city may enact amendments, etc., because down in the latter part of that section, in line 16, it reads: "Every other amendment shall be submitted to the Legislature" —

Mr Marshall — It reads: "Every other such amendment shall be submitted to the Legislature," etc.

Mr J. L. O'Brian — Very well. Now, does that go to an amendment which would grant to the city something beyond its power over its exclusive property, and control over its affairs? In my opinion there is no grant of power

to the city to do any such thing. The grant of power to the city is of exclusive control and management of its property and local affairs, and for the exercise and control of that grant. It is given the power to make or amend the charter, and with the word "government" omitted from this section, I think the interpretation of Mr Nicoll is correct, and I think the city does not have the power to reach out simply by amending its charter or by revising its charter and get for itself anything beyond "control of its property and local affairs," and I think that is reasonably clear on an analysis of the bill, because the bill specifies what the constitution is now intending to grant to cities. We make what we call an exclusive, direct grant to cities, and I don't believe that any more than I believe a man can lift himself by his bootstraps. I don't believe the city can stand on that grant and have the power to amend a charter, to so amend as to add to that original constitutional grant, and therefore I think this argument, for me at any rate, has presented this ambiguity in a very sharp light, and I think it should be dealt with, one way or the other, by the convention.

Mr Wickersham—Your question raises the inquiry of the scope of the grant of power by this article to a city?

Mr J. L. O'Brien—Yes.

Mr Wickersham—Now, laying that aside for one moment, I understand you to differ with the construction which we have put on the article, that within the limits of the constitutional grant of power, the power to amend the charter of the city is vested exclusively in the city, to be exercised by it on its own initiative, and free from legislative interference?

Mr J. L. O'Brien—Yes; but the State, under this suspensive veto provision, while it may not in terms amend the charter, nevertheless the State can pass laws affecting the government of a city provided they are not within the scope of the property and local affairs of the city, and the only limitation of that right is the suspensive veto. I understood that I answered Senator Cobb to that effect yesterday.

Mr Wickersham—In other words, keeping to the point of the argument, for a moment, so long as they do not apply to the legitimate powers conferred upon the city by this article, in other words, to the extent that there is a grant of power by the charter to the city, it is exclusive?

Mr J. L. O'Brien—Yes.

Mr Wickersham—And the local laws which the Legislature may initiate must be those which do not impinge upon the charter of the city so far as that charter will have been constitutionally enacted?

Mr J. L. O'Brien—Yes.

Mr Wickersham—Outside the perimeter of the charter there is, I think, all legislation which affects the city but which does not touch the charter, and that field is left open to legislative initiative, and is made subject to the suspensory veto of the city.

Mr J. L. O'Brien—Yes.

Mr Wickersham—So the two questions which arise are, what is the grant of power by this provision which the city is to exclusively enjoy, and then how may that be taken up which is outside local legislation?

Mr J. L. O'Brien—Yes. Now let us take the police which does present the ambiguity, in my view. This exclusive grant of power would enable, I



presume, a city to decide how many police employees it should have; what their salaries should be and what their duties were; but, as the chairman pointed out, in the language of a layman, suppose the police of the city of New York are not functioning well in the view of Albany, then Albany may pass a special law on the ground that the situation is such in New York City that it has become a matter of state concern. Now, it is a question, in my mind, whether that does not —

Mr Weed — In subdivision *a* of section 4, one of the exclusive powers to control its own property and local affairs is stated to be "The power to organize and manage all departments" — Now, the police department is a well-recognized department of that city and why does not that language prevent the Legislature from interfering with the management of that department?

Mr D. Nicoll — Read it further, Mr Delegate, "and of all police and health officers."

Mr Weed — Well, as I understand it, all the departments in subdivision *a* are specifically included in this grant of power to control and regulate its affairs. Doesn't it seem to you that that prevents the Legislature from initiating any interference with one of those departments mentioned in that section?

Mr J. L. O'Brian — The best answer I can make to that question is the observation of the chairman that if the city department of police is not functioning properly, then the issue becomes a matter of state concern. If we had in this section 4, without expressing any personal opinion or preference, now if we had the word "government," as well as "property" and "local affairs," then I think the question would be answered.

Mr Quigg — Mr O'Brian, in every reference you made to the grant of power here, you have omitted the word "business." You have spoken of the grant of power —

Mr J. L. O'Brian — That was accidental on my part.

Mr Quigg — Will you tell me what distinction you made in your mind between "business" and "local affairs"?

Mr J. L. O'Brian — If I am obliged to confess in this presence, I don't think there is any difference. I think the word "business" adds nothing to the section, in my personal opinion. I think "property" and "local affairs" covers it.

Mr R. B. Smith — Mr Chairman, I am curious to know what that provision of the charter means, particularly with reference to my own city. We have the second class cities law, then we have about eight provisions of law supplemental to each of the different articles of the second class cities law, then we have some fifteen or twenty other special city laws, creating a department of education, several commissions for doing various things, in cleaning out creeks and eliminating grade crossings. I would like to know what is in our charter. Does it include all these grants affecting cities?

Mr J. L. O'Brian — Far be it from me to say what is in the charter of the city of Syracuse. But the only pertinency of that question, I think, Mr Smith, is the question of how you may amend that charter or revise it.

Mr R. B. Smith — I am curious to know.

Mr J. L. O'Brian — The only answer I can make is that legislative authorities of a city may enact amendments to a charter or in local laws affecting property or local affairs.

Mr R. B. Smith—But under the construction given by Mr Low, that whatever is in the charter, no matter to what it relates, stays there until it is amended, then it becomes important to know what the method is.

Mr J. L. O'Brian—Well, Mr Chairman, of course, I think Mr Low's distinction was one of terms. The point is that the Legislature may, unquestionably, under this suspensory veto, pass laws which have the effect of amending the charter, although it does not do so in terms.

Mr Sanders—I have followed very carefully the discussion in which Mr Wickersham and Mr O'Brian have engaged in large part, and I find myself unable to agree entirely with either of them. I agree with Mr Wickersham that the power to amend charters is not limited to the matters in which the cities are given exclusive control. It seems to me that subdivision 5, section 4, is not to the extent that it has been indicated adjective to the powers granted theretofore in the section, but it seems to me that as to any matter as to which a city desires to amend its charter, it may initiate an amendment, and if it is not within the exclusive grant of powers of cities, it must go to the Legislature to give that body an opportunity to annul it. Now, when you get beyond that line, it is my opinion that there is concurrent jurisdiction in the legislative body of the city and in the Legislature of the State under the power granted to the Legislature to pass special laws relating to cities. There may be initiation by the common council of the city subject to the action of the Legislature, or there may be a special law initiated by the Legislature and subject to the suspensive veto.

Mr Franchot—In order to clear this matter up and get it concretely before the committee, I offer the following amendment which will present the issue as to whether we wish to adopt Mr Wickersham's view, Mr O'Brian's view, or Mr Sanders's view of the meaning of the language of this proposal.

The Secretary—Page 5; strike out in subdivision *b* and insert in lieu thereof the following: "Section *b*: The right in the exercise of such power, to amend its charter in so far as it relates to the property, business, or local affairs of a city, and any local or special law relating thereto."

Mr Franchot—Mr Chairman, in support of that suggested amendment, I merely point out that it is clearly the intent of everybody, no matter how they may differ on this question, to reserve certain things to the State for its control by special law under the suspensive veto or otherwise. It is the conception of everybody that there are certain matters which clearly are matters of state concern and are not matters within the designation "property, business and local affairs." Now, those matters, which everybody will admit are matters of local concern; such as the establishment and jurisdiction of local inferior courts, are now vested completely in the charters of the cities, in the charter, for instance, of the city of New York, which has one subdivision consisting of thirty-six pages covering completely the field of local inferior courts at present—almost completely. At any rate, it presents a rather comprehensive system or scheme of local inferior courts. Now, unless the Legislature can change that, can change those provisions of the charter, it is practically helpless to do anything except add to that, and it could not establish a new system of local inferior courts unless it established it as a parallel system to the one which at present exists, because any interference with the present system would be an amendment to the charter so that it seems to me

essential that the authority, and, taking the obverse of that proposition, the local legislative body of the city, with the approval of the board of estimate and the mayor, would have the right to originate changes with respect to the system of local inferior courts, and I do not think it is the intent of anybody, advocates of home rule or otherwise, to vest that function in the city government as distinct from the Legislature. Now, the amendment which has just been read is substantially one which I proposed in the cities committee, and which was not adopted, because apparently a majority of that committee seemed to think that there was no ambiguity in the language now under criticism. I think it ought to be adopted by the committee of the whole simply for the sake of clarity.

Mr Wickersham—Mr Chairman, I don't see how the matter is clarified much by this amendment. I quite agree with Mr Franchot—

In the record of August 17th will be found a discussion in relation to the taxation of educational institutions (Record, p. 2227).

The following is taken from the record of August 17th (Record, p. 2235):

The Secretary—Mr Rodenbeck from the committee on revision and engrossment to which was referred proposed constitutional amendment introduced by the committee on education no. 801, introductory no. 698, entitled, proposed constitutional amendment, to amend section 1 of article 9 of the constitution, in relation to the supervision and control by the State of the education of children, reports the same as examined and found correctly engrossed.

The President—The question is on agreeing to the report of the committee. Those in favor will say Aye, contrary No. The report is agreed to and the proposed amendment will be put on the third reading calendar.

The following is taken from the record of August 18th (Record, p. 2343):

#### PROPOSED CONSTITUTIONAL AMENDMENT

To amend section 1 of article 9 of the constitution, in relation to the supervision and control by the State of the education of children

*The Delegates of the People of the State of New York, in convention assembled, do propose as follows:*

Section 1 of article 9 of the constitution is hereby amended to read as follows:

Section 1 The State shall continue the supervision and control of the education of children as a state function and no powers in derogation thereof shall be conferred upon the local authorities of any civil division of the State. The Legislature shall provide for the maintenance and support of a system of free, common schools, wherein all the children of the State may be educated.

The President—The question is upon the adoption of the proposed amendment which has now been read.

Mr Sheehan—Before this matter is disposed of, I should like to ask the chairman of the committee on education a question or two. Under the guise



of providing for the better security of religious freedom, the Legislature in 1892, I have not the particular chapter, but in 1892, in effect prohibited the reading of any particular Bible to the inmates of penal institutions over which the State had control. If this proposition is written into the constitution I ask the chairman of the committee on education if the Legislature will not have similar power to prohibit the reading of any Bible in the schools of the State over which it has control, and I pause for a reply.

Mr Schurman—Mr President, the proposed amendment does not deal with that question at all, and I should think it has absolutely nothing to do with it.

Mr Sheehan—I ask again, Mr President, and I ask a frank discussion of the proposition. Assuming that most of the great religious denominations of the State within the next twenty years adopt the denominational school system wherein religious doctrine is taught side by side with the studies approved by the State Board of Regents, can the State under the authority here conferred attempt to regulate such institutions? I am making no argument. I simply address those questions to the distinguished chairman of the committee, and it is no answer, I submit, to the question, that this proposed amendment does not deal with the subject or does not give the authority to deal with it.

Mr Marshall—I do not really understand the question which the gentleman from New York has addressed to the chairman of the committee on education. He has requested me to answer and give my views as to the interpretation of this section. I can not conceive how it is possible that this provision shall in any way deal with the subject of religion. It is to be read in connection with section 3 of article I of the constitution, which guarantees the right to the free exercise and enjoyment of religious profession and worship, without discrimination or preference, and that liberty of conscience secured by the constitution is absolutely buttressed about by the provision which I have just read. Now, in connection with the education of the children of the State, we are not dealing with anything but secular education, not with religious education. It has never been a part of our educational policy of the State to have subjects of religion made a part of our educational curriculum, and I should be the first man in this convention to take up the cudgel for absolute religious liberty, for absolute severance of church and state, for prohibition of any attempt to interfere with the absolute freedom of conscience of the children of the schools and of the parents who send their children to school. During the last session of the Legislature an attempt was made to require the compulsory reading of the Bible in the schools. I fought against that measure as I always shall if any such measure should be attempted to be introduced in the Legislature of this State, and feeling as I do upon the subject and expressing what I understand to be the views of the chairman of the committee on education upon that subject, I do not think that there is the slightest occasion for concern on the part of anybody who is interested in maintaining the policy which has heretofore prevailed in this State of absolute severance of church and State, of the absolute division between religious and secular education, and there is absolutely no danger that I can see possible within the language of this provision to those principles.



William F. Sheehan

Mr Sheehan — Mr President, just a word in reference to Mr Marshall's suggestion. I do not suggest that this proposition at all restricts the free right to religious belief; that is not what I have in mind, because it does not, and it could not do so in the light of the other part of the constitution to which Mr Marshall refers. But, assuming that education is to be a State function, and assuming that the Legislature, through the power which it confers upon the Regents, fixes the course of studies to be adopted in parochial schools — let us assume that they are in control of parochial schools substantially as they are in control of the public schools — can they prohibit religious teaching at the same time that they are receiving secular teaching?

Mr Marshall — Is it your fear that this would enable the state educational authorities to prohibit religious training in parochial schools in connection with the secular training at those schools?

Mr Sheehan — Would the Legislature have such power?

Mr Marshall — I do not think it is possible that they could exercise that power. That is certainly far from any possible intendment of this provision. This merely deals with the general subject of education. There is no right to interfere in parochial schools, so far as it relates to the religious training of the children in the parochial schools. All that can possibly be done by the State in connection with the parochial schools would be that the children should attend those schools and be obliged to pursue certain school studies at some time in accordance with some general requirement, as, for instance, that they should be required to learn to read and to write and know something of the rudiments of arithmetic, know something of geography and possibly something about the history of our country, and subjects of that character. There would be no possible right to interfere with the study of religion in connection with secular subjects, either intermingled or interwoven or separately. Such a prohibition can not be deduced legitimately from the language of this constitutional provision.

Mr Blauvelt — The present provision of the constitution reads: "The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of this State may be educated." That provision has been construed by the courts to mean that public education is a state function. The intent of this amended section is to write that into the constitution, so that the State can never in the future transfer or surrender or alienate that sovereign duty. There is no provision in the present constitution, and no intent in the proposed amendment, to compel children to attend the public schools. There is a statute which provides that all children of certain ages must attend school a certain period of time each year. The Board of Regents and the Department of Education have prescribed in the public schools the curriculum and the standard of education to be taught in those particular years to the children attending the public schools. Children attending sectarian schools comply with that statute if they attend the required period and the schools teach the course of study prescribed by the board of education and the University of the State. The Legislature now exercises to that extent jurisdiction over the sectarian schools. It is not intended by this provision to give any greater power to the Legislature or to the board of education than they now possess, to change that present provision of the statute in that respect. In so far as a child's religious instruction is concerned, every child is protected by the provision of the constitution which Mr Marshall has read.



Mr Sheehan—I want to put another question to Mr Blauvelt or to Mr Marshall. I am sorry to take up so much time.

The President—That can only be done by unanimous consent.

Mr Sheehan—Well, I desire to make this point—

The President—The Chair is sorry to inform Governor Sheehan that his time under the rule has expired. Is there objection to Mr Sheehan putting the question which he desires? The Chair hears none and the opportunity is afforded.

Mr Sheehan—I call the attention of Dr Schurman and Mr Marshall and Mr Blauvelt to the language of the present constitution, article 9, section 1: "The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of the State may be educated." I also call their attention to the fact that in this proposal it is stated: "The State shall continue its supervision and control of the education of the children," etc. It is a broadening, as I read it, of the present section 1, article 9, of the constitution. Parochial schools are now subject to visitation by the Regents. If we have a general adoption of the parochial school system, attaching, as it possibly may, to all the great religious denominations within the next twenty years, can the Legislature or the Regents abolish or regulate, if you will, the character of the textbooks that will be used or read in these schools?

Mr Shipman—Mr President, as one of the committee on education and as one of the advocates of this amendment, as I have spoken on the subject in the committee of the whole, I would ask that this be amended by the insertion of the word "secular" and I think that that will accomplish the result at which we all aim. I therefore make that amendment and move that it be recommitted to the committee with instructions to amend it accordingly.

The President—The motion, as the Chair understands it, is to recommit to the committee on education—with instructions to amend by inserting the word "secular" before the word "education." That motion is not debatable.

Mr Schurman—Mr President, may I ask if we can not by unanimous consent make this amendment now? I will accept if there is no objection on the part of my associates. I will accept it for the committee on education.

The President—The Chair will say that on the adoption of the motion made by Mr Shipman to recommit the bill to the committee on education with instructions to amend by inserting the word "secular," and reporting forthwith, it will be self-executed, and the bill will be regarded as reported immediately upon the adoption of the motion, if it be adopted. All in favor of the motion to recommit, amend by inserting the word "secular" before the word education, and report forthwith, will say Aye, contrary No. The motion is agreed to and the bill is before the convention as amended. Still open to debate.

Mr M. J. O'Brien—When this matter came up on the calendar this morning, I made a request, because, as I shall point out to the gentlemen, I hope, the danger of this amendment if in its present form it should be adopted, that this matter should go over until tomorrow morning. No time would be lost and the distinguished chairman of that committee insisted upon pressing this proposal to a vote.

Mr Wickersham — Mr President, I ask that order be preserved during this discussion.

The President — The Chair will say that having been amended, it will have to be reprinted before its final adoption, it therefore will lie over until tomorrow morning. If reported it will come up on the order of third reading.

Mr M. J. O'Brien — Mr President, have I a right to suggest an amendment to this, which I think, instead of the word "secular" — I would ask the chairman of the committee, and it was with that view I am pleased to have it go over, because I do not think we will have any difference when we have a chance to confer, and that was to have the section read as follows: "The State shall continue its supervision and control of the education of children in the great common schools as a state function."

Mr Schurman — Mr President, may I answer that? There would be objection to that limitation, for the reason, the committee desired to embody in the constitution the policy of the State as established in practice and confirmed by the courts, and I take this opportunity of calling the attention of the legal gentlemen, who constitute three-fourths of this convention, to the opinion of the Court of Appeals in the Gunnison case. Now under the present practice the State supervises and controls to some extent the public schools, to a different extent private schools. We do not want to put any clause in the constitution which will limit in any way the supervision and control which the State now exercises. We want that neither more nor less embodied and safeguarded in this amendment.

Mr Clearwater — It is a great fundamental principle, not only of this Commonwealth but of this Republic, that all of its citizens should enjoy the most unbounded and limitless civil and religious liberty. There is no greater stickler for religious liberty, in this convention, than myself? My ancestors were exiled because of their religious belief and they came here to enjoy that religious liberty which the people of this Commonwealth always have enjoyed. I speak at the request of the chairman of the committee on education, of which I, myself, was a member, and during our discussion and the many hearings we gave, to educators and persons interested in the cause of education, persons desiring the introduction into the constitution of some phase of religious education, we dismissed that phase absolutely; and because what he said upon the floor of this convention may hereafter be referred to in construing any provision of the constitution which the convention shall adopt and the people confirm, now let me say, sir, that the apprehensions of my distinguished friend from New York, Governor Sheehan, possibly of Judge O'Brien, are absolutely unfounded. There was not in the mind of the committee the slightest thought of interfering with religious education. The purpose of this amendment, sir, was to put into the constitution a provision that the State should forever prescribe at least the minimum curriculum in the public schools of the State in so far as the secular education of the children of the State was concerned. Why, the committee on education recognized, sir, as every delegate on the floor of this convention must recognize, that there is nothing dearer to the citizens of this State than religious liberty, transcending by far in the esteem of every right-minded man all rights of property and all rights of persons; and the committee

would have been derelict in its duty and the convention would be derelict in its duty if in the slightest extent it impinged upon the sacred right of religious liberty. I am at a loss to understand these apprehensions. Surely the criticism can not be founded upon a metriculous disposition to criticize.

Now the language is perfectly plain, although the suggested amendment of Mr Shipman, a Regent of the University, admirably qualified to express an opinion upon this subject, would remove all questions, but "The state shall continue its supervision and control of the secular education of the children of the state"—as to what the future may bring forth with regard to the conduct of the parochial schools, we know not. It is not a question that we ever have considered. I could elaborate, sir—your gavel will fall—but I think I have indicated the attitude of the committee and its absolute freedom from even the imputation of a suspicion that it intended to insert in this constitution anything which would limit the great right, the fundamental and inalienable right of religious education.

The President—The gentleman's time has expired. The amendment will stand over for reprinting.

The following is taken from the record of August 19th (Record, p. 2440) :

Mr Schurman—By the unanimous instruction of the committee on education, I desire to present an amendment. I suppose it will take this form. I move to discharge the committee on revision and engrossment from further consideration of proposed amendment no. 818, int. no. 698, and to recommit the said proposed constitutional amendment to the committee on education, with instructions to amend as indicated, to report forthwith with amendment, the proposition to maintain its place on the calendar.

The Secretary—By Mr Schurman. Proposed constitutional amendment, no. 818, int. no. 698, to discharge the committee on revision and engrossment from further consideration thereof, to recommit the same to the committee on education, with instructions to amend as indicated, to report forthwith with amendment, the proposition retaining its place on the calendar: On page 1, line 4, strike out the words "secular education of children as a state function" and in place thereof insert the following: "Education of children in its free common schools and shall exercise such supervision and control elsewhere than in such schools as it now possesses."

The President—Is the convention ready for the question? All in favor of the resolution say Aye, contrary No. The resolution is agreed to.

In discussing matters pertaining to charitable institutions on August 24th Hon. Harold J. Hinman of Albany spoke as follows (Record, p. 2889) :

Our experience with the Regents of the Education Department has been a most excellent experience and it has grown out of one of the most tremendous struggles the State ever saw, the struggle between the Regents and the Superintendents of Education that had provided for the unification of that system. And it has developed into the best known department, and is recognized as such in the state government.



The following is taken from the debate on the home rule question of August 24th:

Mr Low — Mr Chairman, the exclusive grant to the cities is subject to the provisions of the constitution, subject to the provisions of the general laws of the State, which apply without classification or distinction to all the cities of the State, and to laws applying to a county not wholly included within a city, establishing or affecting the relations of such a county or city therein. The last proviso meets, I think, the question raised by Mr Barrett, the delegate from Westchester. I think that no change has been made in subdivision *a*, which appears at the top of page 3; but subdivision *b* has been importantly amended and I ask the particular attention of the House to this amendment. Subdivision *b* now reads: "The power is hereinafter provided to revise or enact amendments to its charter in relation to its property, affairs or municipal government and to enact amendments to any local or special law with relation thereto." That is a change of expression but no change of significance. The new matter follows: "A city may enact amendments to its charter or in existing special or local law in relation to any matter of state concern; the management, regulation and control of which shall have been delegated to the city by law until and unless the Legislature, pursuant to the provisions of section 4 of this article, shall enact a law inconsistent with such amendments. The term charter is declared for the purposes of this article to include any general city law enacted for the cities of one class, in so far as it applies to such cities." Now, Mr Chairman, the part of paragraph *b* beginning with the word "city" on line 15, and terminating with the word "amendments" on line 20, is an exceedingly vital part of this amendment as it now reads. Every member of the committee will appreciate that the great difficulty in connection with any home rule question whatever is to determine what are the powers of the city and what are the powers of the State in that twilight zone where both are concerned. This amendment is based upon the relations between Congress and the states in connection with interstate commerce. Every one appreciates that in controlling and regulating interstate commerce Congress is paramount. Nevertheless the states are free to act unless Congress by its enactments sets their action aside. Now that is the theory of this amendment, and of course under the exclusive grant to the cities to look after their own affairs, the cities may amend their charters as to such matters without any hesitation, but when the broader line is reached, without this amendment it might have been the necessary effect of caution to submit every proposed amendment to the Legislature and secure a special law. With this amendment, the city is free, you see, to amend its charter or any existing special or local law in relation to any matter of state concern, the management, regulation and control of which shall have been delegated to the city by law; and that action will stand and be lawful until or unless the Legislature sets it aside by acting in this field of state concern in the way provided in the following section of this article. I call the particular attention of the members of the committee to two phrases. We say that the State may enact these amendments as to any matter of state concern, the management, regulation and control of which shall be delegated to the city by law. In other words, the city can not go outside of its grant of power to

deal with such matters and take up new activities or new powers. It can pass these amendments as to the things which have already been committed to it; and by that phrase "shall have been delegated by law," we mean whether by its charter, by any special or general law, or from the date of the city's action; whatever power has been granted to the city as to such matters, whatever matter of state concern has been put under the control of the city as to such matters at the time of its action, whether by its charter, by general law, by special law, that comes within the competency of the city. The last four lines of that section, lines 20 to 23, meet the inquiry—are intended to meet the inquiry submitted by Mr R. B. Smith as to what is the charter of one of the second class cities which are governed by a general city law.

The Chairman—The Chair regrets to call attention to the fact that the gentleman's time has expired.

Mr Low—I would ask unanimous consent to complete my explanation, Mr Chairman. It would take only a very few minutes more.

The Chairman—Is there any objection? If not, the gentleman may proceed. But, before proceeding, the Chair would like to call the attention of the committee to the fact that members say they can not hear on account of the confusion in the body. The Chair therefore desires to say that, as the debate is limited to ten minutes for each person, and we have only two hours on this matter, he hopes the members will not move about any more than is necessary or create any confusion, and especially that all matters not connected with the convention will cease in the room during this debate.

Mr Low—Mr Chairman, beginning at the end of line 26, on page 3, there is a proviso that is new in connection with the city's action in enacting such amendments: "provided, however, that in a city in which any of the members of the board of estimate and apportionment are not elected or in which no such body exists no such amendment shall be enacted without the assent of two-thirds of all members elected to such legislative body." That has reference to the cities of the second class which have boards of estimate and apportionment, two of whose members, however, are appointed by the mayor. It also has reference to cities having the commission form of government, with five members in the commission, so that such a city must have a quorum of four out of the five to take such action. I think there is no other change of significance in that paragraph except that we have provided that such amendments may be submitted to the Legislature in 1916, on or before the 15th day of February, instead of during the first week of the session. That amendment was made to meet criticism that came from some of the cities that without it the year 1916 was a year in which no amendment could be obtained. Beginning with page 20—at least, line 20 of page 4, the committee has inserted the suggestion that the election to decide whether a city wants a new charter, and if it does, to elect the commission for its revision at the same time. The election on that subject will take place in what I may call the first city year. That is to say, 1917, two years from now. And, as the matter involves some detail, the clause ends with this sentence: "The Legislature shall by general law provide for carrying into effect the provisions of this paragraph." There is no further change, I think, except in the matter of arrangement, until we reach page 6, beginning with line 7 and going through line 22. I believe that those four clauses are all new; at any rate, as they now read: "The Legislature may delegate to the cities for exercise

within their respective local jurisdictions such of its powers of legislation as to matters of state concern, as it may from time to time deem expedient." I think that is self-explanatory. "The Legislature shall pass no law relating to the property, affairs, or municipal government of any city excepting such as is applicable to all the cities of the State without classification or distinction." The intent of that paragraph is to forbid the Legislature from passing such laws within the field of the exclusive grant to cities. Within that field the Legislature can legislate only by general law affecting all cities without classification or distinction. The third paragraph reads: "The provisions of this article shall not be deemed to restrict the powers of the Legislature to pass laws regulating matters of state concern as distinguished from matters relating to the property, affairs, or municipal government of cities." In other words, while the Legislature can not enter the field of the exclusive grant by a special law, outside of that field it can legislate by a special law. Then the next paragraph defines what is a special city law, which shall be adopted. It says: "Laws affecting the government of cities in matters of state concern and applying to less than all the cities of the State without classification or distinction are defined for the purposes of this article as special city laws." Those special laws are to be passed as now, with the suspensive veto of the locality.

From the Record, page 2921:

Mr J. L. O'Brian—Mr Chairman, it was the intention of the committee, I assume, by the language on page 6, which was overlooked, until Mr Parsons called attention to it, overlooked by the gentleman who raised this question, and the committee has put it in explicit language, as to the future, the Legislature can pass no law relating to the property, affairs or municipal government of any city, except such as is applicable to all the cities in the State without classification or distinction, and it further provides in the language following that, which I have just read, that the Legislature can pass no special law affecting the city in those particulars, except in a matter of state concern as distinguished from matters of municipal government, and this latter class of laws must be submitted to the suspensive veto of the city. Therefore, I think there is no occasion for the amendment suggested by the gentleman from New York. The bill is explicit on that point.

Mr Marshall—I would like to ask the gentleman a question.

The Chairman—The gentleman from New York, Mr Wagner, has the floor.

Mr Wagner—I yield for the purpose of clearing up these points.

Mr Marshall—In respect to your suggestion that there ought to be a change in line 20, section 10, article 8, after the word "constitution" because you fear that otherwise the provisions of article 3, section 1, would be controlling, namely, "the power of the Legislature shall be vested in the Senate and Assembly," I would call your attention to section 27 of article 3 of the constitution, which has been in the constitution ever since 1846, which provides that the Legislature shall by general laws confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may, from time to time, deem expedient. Now, that has been interpreted by the Court of Appeals in



a number of instances as being a power which is not subject to the interpretation which the gentleman seeks to give now to the terms of article 3, section 1. In other words, having given that power of local administration, that power is the controlling power. So here the city, having by the constitution raised the power to deal with matters of local affairs, having been given this grant of power, set forth in section 3, there we have granted a particular power, a specific power, and that, of course, controls the general power of legislation which is contained in article 3 of section 1. That is the fundamental interpretation regarding the constitution.

Mr Wagner— I am satisfied, Mr Chairman, if the gentleman, Mr Marshall, is satisfied, that this does not limit the legislative power we are attempting in other provisions to give to the locality, I have nothing more to say.

Mr Marshall— I have not the slightest doubt on that subject, that they are specific, particular powers which are not subject to that general clause.

In a debate on amendment no. 831 relating to governor and other state officers, on August 27th, Hon. Frederick C. Tanner of New York City made the following reference to the Education Department (Record, p. 3329):

The Department of Education, it is provided, shall be administered by the University of the State of New York; the chief administrative officer shall be appointed by the Regents, and here again we have found a magnificent institution, and we have left well enough alone.

Speaking on the proposition relative to powers of the proposed Department of Public Works, Hon. Alfred E. Smith of New York City, made the following reference in relation to the care of the Education Building (Record, p. 3348):

Now take section 9, the Department of Public Works. Here is something that I seriously object to, something— although it doesn't say so in so many words, it says, in intent and spirit: "keep politics out of the constitution." Don't let the Board of Regents, because they happen to be the Board of Regents, come over here and have an exception that they can for all time take care of their building over there but the superintendent of public works must take care of the rest of the buildings in the State, from John Boyd Thacher's mansion up to the Capitol itself, leaving right across here a building that should, if any building should, be under the superintendent of public works. That is in the interest of efficiency and economy. That building is excluded for all time by the constitution from the supervision of the superintendent of public works.

Mr Tanner— Is it not your construction of line 11, when it says "All public buildings not assigned by law to any other department"— that the Legislature can do it?

Mr A. E. Smith— No, not assigned by law at the time this takes effect.

Mr Stimson— Would your present objection be entirely removed if the words read "not from time to time assigned by law"?

Mr A. E. Smith— Where would you put that?

Mr Stimson— Immediately after the words "from time to time."

Mr A. E. Smith—No, sir; because I will tell you the reason why. The care and custody of that building is now assigned by law to the Regents. And I have an idea this fixes it.

Mr Wickersham—Would the words “heretofore” or “hereafter” meet your objection?

Mr A. E. Smith—No. You must remember you are giving the head of the Department of Public Works the supervision of all the public buildings of the State, except the Department of Education. That is the effect of that.

Mr Stimson—I think I remember the views of the committee correctly when I say there is no intention of giving to that clause the meaning which you attribute to it. The intention of the committee was simply that it should except from the control of the Department of Public Works such buildings as might from time to time be assigned to other custody by statute.

Mr A. E. Smith—Well, that is not what you say.

Mr Stimson—That could be easily remedied by a slight amendment, if you had any doubt about the question.

Mr A. E. Smith—There is no doubt in my mind. I don't know what the committee had in mind, but there is no doubt about what that does. And I base it upon my experience of 1913 in trying to put that building under the Superintendent of Public Works.

Speaking further upon the proposition relating to Governor and other State officers Hon. A. E. Smith made the following reference to the Education Department: “The Department of Education is all right.”

The following is taken from the record of August 30th (p. 3612) :

The Secretary—Section 16. The Department of Education shall be administered by the University of the State of New York. The chief administrative officer of the department shall be appointed by the Regents of the University.

The Chairman—The question is on the adoption of section 16 as read. All in favor will say Aye, contrary No. The section is adopted as read.

The following is taken from the record of August 31st (p. 3636) :

The Secretary—No. 820, by the committee on education. To amend section 1 of article 9 of the constitution, in relation to the supervision and control by the State of the education of children.

The President—The proposed amendment is now open for debate under the rules.

Mr Schurman—Mr President, I move its adoption. This proposed constitutional amendment now before us was unanimously adopted by the committee on education. I explained in the committee of the whole dealing with the proposed constitutional amendment in the form in which it then was that the committee on education had given hearings to all interested and had carefully considered every aspect of the question. The amendment in its present form was adopted to meet the objections which were presented in the discussion on the order of third reading. It will be recalled that the suggestion was made that the language of the proposal might authorize interference with religious instruction in denominational schools. Nothing, how-

ever, could have been further from the desire and intention of the committee on education. They, consequently, reconsidered the language of the amendment in the light of the objections presented. And they now unanimously submit the proposal in the amended form in which it is before this convention. It will be observed that the difference between the proposal in its present form and in its earlier form lies in the fact that in its present form the proposal speaks of education first, in the free common schools, and secondly, elsewhere than in such schools. This classification was borrowed from the Education Law, having been inserted therein for the purpose of declaring the place in which the instruction required by the State may be received. The Education Law, section 620, states that the instruction required under this article shall be:

- 1 At a public school . . . .
- 2 Elsewhere than a public school.

The supervision and control which the State exercises over the public schools, designated in the constitution free common schools, is practically absolute. On the other hand, the supervision and control which the State exercises over instruction elsewhere than at a public school has for its object the enforcement of equivalency with the instruction prescribed in the free common schools.

It has been, and will remain, the duty of the Legislature to fix the minimum standard of instruction which shall be obligatory upon pupils in attendance either at a public school or elsewhere than a public school. The statute now requires that a child who does not attend upon instruction at a public school may attend elsewhere upon instruction, provided such instruction is equivalent to the instruction given children of like age at a public school of the city or district in which such child resides. Where instruction is given elsewhere than at a public school the child must be in attendance during the same period of time as is required in the case of attendance at a public school. Whatever schools children attend, the length of vacations and the number of holidays must be the same. It scarcely needs pointing out that the Legislature may, in the future, prescribe a different minimum standard from the present one. The Legislature may, in the future, vary the length of the vacation and the number of holidays, and the number of days of instruction, and the number of hours each day. If, in the exercise of this legislative power, the Legislature should increase the standard of instruction for children in the public schools of the State, then, in virtue of the power of supervision and control which the State now possesses, it would be the duty of the Department of Education to see that children educated elsewhere than in public schools were receiving an education substantially equivalent to the enhanced education then prevailing in the public schools. It will be observed that the supervision and control by the State in schools other than public schools is undertaken for the sake of guaranteeing the children an education of a certain prescribed standard. Extensive modifications may be made in the future, either in that standard itself or in the means used for realizing it, but whatever changes may in this regard be made, it will be the right and duty of the State, under the power of supervision and control which it now possesses, to insist that schools other than public schools shall satisfy such requirement. The supreme end in view with reference to such schools is equivalency of instruction. Supervision and control are means to that end. Mr President, I move the adoption of the pending amendment.



Mr Cobb—Mr President, I do not rise to make a speech on this question further than to express my humble opinion that it is very unwise to interfere with the present provision of the constitution relative to public schools. The situation is a delicate one. We have our free public schools, the parochial schools, private schools, the schools maintained by various denominations. Now, so far as I know every one is satisfied with the present situation. Education has not suffered under the existing provision which is that the Legislature shall provide for the maintenance and support of a system of free common schools, where all the children of the State may be educated. That education is a public function has been settled by the courts. Now, why introduce into this situation which is satisfactory to all sides the possibility of trouble? I think this convention has received millions of these orange cards during this convention, indicating the fear on somebody's part that the parochial schools were going to gain some advantage here, or that they had some ambitions in that direction. From the other side, there has been expressed a fear that the state power would be further broadened and enlarged to their disadvantage. I do not think you can change a word in the existing provisions without introducing uncertainty, anxiety, trouble, confusion. You take the first provision: "The State shall continue its supervision and control of the education of children in its free common schools," as contrasted with the present provision: "The Legislature shall provide for the maintenance and support of a system of free common schools." It is undoubtedly to further enlarge and broaden and fix the centralized power, so far as the free common schools are concerned. I know that in the rural districts they are not particularly anxious for anything of that kind. Take the second provision, "and shall exercise such supervision and control elsewhere than in such schools as it now possesses." What does that mean? Simply that they shall go along and exercise the powers they now enjoy. To understand it, you must examine the law of the State, the statutes and decisions. We constitutionalize and fix them at this particular moment, and say that the conditions that now exist shall continue. If it has any effect, it is not a beneficial effect. I do not see the necessity of it. Then we go on and say: "and no powers in derogation thereof shall be conferred upon the local authorities of any civil division of the State." I have heard no argument that the schools have suffered or need a change. I do not know just how the present law is today. I do not know how it will affect a great many somewhat delicate matters that occur to me. For instance, in my own city, by a decision of the Court of Appeals, the city is aiding the orphan asylums there, which are denominational, and which are educating the children. We think it is to our advantage to do so. I do not know how this would affect the state of that law in that respect. I certainly think it is unwise to stir up this situation, to change this language, to introduce a lot of words and expressions which will have to be interpreted and to arouse suspicion and arouse antagonism to the constitution. I suppose that this bill will have to be recommitted unless it is voted down at this time. I don't know that I care to say anything further. I have not looked into the question. I have not prepared to make a speech, but I am expressing a pretty strong instinct, I feel, and one that is borne to me from all the people that I come in contact with, that this is one provision of the constitution that might well be left alone.

Mr J. L. O'Brian—Mr President, speaking my own personal view I am opposed to this bill and shall vote in opposition to it. The speech which Mr Cobb has just made has admirably expressed, I think, the common sense of the situation. This proposed amendment either changes the existing situation, or it does not change the existing situation. If it does not change the existing situation in regard to education, and supervision of public and private schools, then there is no necessity whatever for this measure. If it does propose to change the existing order, then we would have a right to ask exactly how it would change the existing order and what the effect of it would be, and in that particular I find among the lawyers with whom I have talked in this convention considerable difference of opinion. For example, you provide here for a distinction between free common schools and the private schools of all sorts, something hitherto unknown in our constitution, and as to those private schools as distinguished from the free common schools the proposers of this measure say that in the future the State shall exercise such supervision and control as it now possesses. Now, in my opinion in the first place there is no occasion for any such provision in the constitution. In the second place I find a disagreement among the attorneys who have read this section in this proposed amendment. Part of them say that that wording absolutely ties the hands of the State for the future, so that it can never exercise any more control than it does now. Part of them, on the other hand, say that that is not the case; that it leaves the State with the power of extension, that it may extend its control. Now, taking the position that Mr Cobb has taken, I think any such experiment as this with a subject upon which all the people are keenly alive, is a dangerous experiment. The best reply to this proposed amendment is that under the existing clause of the constitution the courts have passed upon our rights of supervision and control and so we all understand them as they exist today; everybody is satisfied with it and to adopt this amendment would be to inject, in my opinion, a very serious element of danger into the interpretation of the law into the constitution, and I trust as far as I am concerned that this amendment will not pass.

Mr McKinney—Mr President, before the roll is called on this proposition, I desire to offer some remarks in support of the contention of the learned chairman of the committee on education, with whom I served, to the effect that the purpose sought to be accomplished by this amendment is plainly apparent, and that the amendment approaches that purpose with language simple and direct; also to the effect that there is nothing proposed or intended by this amendment which is not plainly apparent upon its face. It is not true, I think, as has been stated, that this amendment leaves the law exactly as it stands and that we are merely constitutionalizing the present interpretation by the courts of the functions of the Legislature. It is true, Mr President, that the courts have decided that education is now a state function; but it is also true that that decision means that education is a state function only by virtue of statute. It is only because the Legislature of the State has assumed by statutory enactment to regulate education, and to take entire charge of it, that it is a state function. There is nothing in the law or the statute or in the constitution at the present time which forbids the Legislature from abrogating its powers, from surrendering its absolute

control to whatsoever body, municipal or otherwise, it pleases. So that the issue is clearly drawn by this provision, and if there be those who claim that education is not a state function, and that the State should have the privilege of surrendering its absolute and complete control to any civil division or other body, this amendment naturally contravenes their wishes. If on the other hand it is desirable, as the committee thought it is, to place in the constitution a provision that the control of the State should be absolutely permanent and shall not be surrendered at any time to any civil division, or to any body sectarian or otherwise, then this provision should be adopted. The issue, therefore, I say, is clearly drawn and the purpose to be accomplished by this amendment is plainly apparent. We would merely continue the present legal situation as interpreted by the courts. The provision in the amendment that the supervision and control of education "elsewhere" is of the same character and was inserted by the committee merely to allay apprehension which the committee believes should not rightly exist, but in our opinion it does allay any such apprehension and it leaves the control of denominational, sectarian and other than public schools exactly as it stands now and exactly in the situation which is so satisfactory, apparently, to the people of the State.

Mr Lindsay—Does not the provision declaring that the supervision and control of schools other than public schools, at the bottom of the page, confine the Legislature to exactly the present law, and tie its hands in case it desires to extend such supervision and control?

Mr McKinney—Generally as to control, but not as to details.

The President—The gentleman's time has expired.

Mr Quigg—Mr President, when this amendment was being discussed before I voted for it, but the explanation that Doctor Schurman gives now of the sentence here in respect to supervision of the State disturbs me. He says that it means that instruction in parochial and other schools must be equivalent to the instruction in the public schools. But, sir, that may mean that in the supervision of somebody, some agent of the State, it may be thought that the instruction in a Jewish or Catholic school, a private school, is too religious, and that it sacrifices secular instruction to religious instruction. If under the interpretation that Doctor Schurman has given that that ruling can be had, I am against the amendment for the reason that I believe that parents should have the right to give their children such instruction as they think before God they ought to. It is hard enough on them, for those of us who are not Jews and Catholics, to compel them to support the public schools, without having the use of them, since in conscience they can not use them. Now, if we are to invade their schools and say that they are sacrificing secular to religious instruction I shall be against the bill. I call Doctor Schurman's attention to the fact that the courts do give in their interpretation of amendments, and especially amendments that undertake to constitutionalize what is already the law—do give attention to debates and do consider what men say who are proposing these measures. I hope there will be some distinct statement on this subject.

Mr Marshall—I am sure that Mr Quigg will admit there is no one who believes more firmly that there should be liberty of conscience of all citizens of the State than do I; and that, so far as the Jews are concerned, there is



no one who has a greater regard for their rights and liberties than I have. I can therefore say to Mr Quigg and to the gentlemen of this convention with a clear conscience that I can see nothing but good in the provision which has been presented and which we are now about to vote upon. The question arose, when this matter came up on the last occasion before the convention, as to whether or not there was anything in this provision which might in any way interfere with liberty of conscience. The suggestion was then made, as I understand, that this was to have no interpretation, except as to dealing with secular education. Other questions then arose and it was referred back to the committee for further discussion. The committee invited a number of gentlemen who had given much thought to this subject and who were very much concerned with the question as to whether or not this would interfere with liberty of conscience, to appear before them, and, as the result of very careful and painstaking discussion, the measure in its present form was adopted, with the unanimous approval of every member of the committee, of which I am not a member, and of the gentlemen who were present and who had been brought into consultation. All of them had given the subject thought from the legal standpoint and from the standpoint of what would be accomplished, so far as religious liberty is concerned. Now, the principle which it was deemed important and necessary to lay down was that the State continue its supervision and control of the education of children in the free common schools. That should continue to be a state function. It was deemed necessary and proper that the State should charge itself with that as a duty, and it is for the interest of the State, as everybody must admit, that the education of children shall be preserved and shall be maintained. Now, the question was as to whether or not the declaration of that general policy would affect the citizens of the State and the children of the State, and would in any way interfere with religious liberty. Now, we found that the State has been exercising jurisdiction over all schools, not only over common schools but also over private institutions, over parochial schools, over the education of children in their homes, and that it had laid down a principle which had been adopted with the consent of all these organizations, and it had worked well for the benefit of the State.

Now, those principles were simple. They are laid down in the Education Law, in sections 620, 621 and 623. Section 620 says: "The instruction required under this article shall be, first, at a public school in which at least the six common school branches, of reading, spelling, writing, arithmetic, English language and geography are taught in English. Second, elsewhere than a public school upon instruction in the same subject taught in English by competent teachers." Now, there is the supervision and control exercised "or elsewhere than in the common schools of the State," which the State now possesses, and that is what is intended to be preserved. Now, those who favor the literacy test, and the use of the English language, certainly can not object that these subjects shall be taught in the English language. Those who were opposed to the literacy test and who believe in the education of the children can not object that in all schools the English language shall be taught, that these subjects shall be taught in the English language. Now, section 621, requires attendance upon instruction. That is the compulsory education law. It requires that a child shall attend

school in a free common school or elsewhere; that the child must have within certain years of his age this instruction. Then comes finally section 623, that "If any such child shall so attend upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given to children of like age at the public school of the city or district in which such child resides; and such attendance shall be for at least as many hours each day thereof as are required of children of like age at public schools; and no greater total amount of holidays or vacations shall be deducted from such attendance during the period such attendance is required than is allowed in such public school to children of like age. Occasional absences from such attendance, not amounting to irregular attendance in the fair meaning of the term, shall be allowed upon such excuses only as would be allowed in like case by the general rules and practice of such public school."

The President — The gentleman's time has expired.

Mr Leggett — I recall that when this matter was before the convention on the 29th day of July, I made this remark: "I do not know that I need to be ashamed to confess that my hold on the exact meaning of the intent and effect of the language employed in this proposal is rather slippery." I recall that my distinguished friend, Judge Clearwater, followed me, and, referring to my remarks, said this: "Regarding his rather uncomplimentary characterization of this amendment as 'slippery,' it would seem to me that it is the reverse of 'slippery.' I challenge the gentleman to phrase this idea expressed in this amendment in a more forceful, more illuminative, more expressive phraseology." I submit, gentlemen, that my characterization of this language as "slippery" has found a number of adherents, that people have become somewhat uncertain as to what it really did mean, and as to what its real effect was. We find later on that delegates here interested in private and parochial schools were afraid of the language. They did not know to what it might lead, and under their impulses it was changed, and this change, I am frank to say, has brought fears from other quarters. Now, it is violating no secret to say that people outside of this convention who are not interested in private and parochial schools are afraid of the language of this amendment as it now stands. I also said on that day, words which I believe are just as true today: "It seems to me that it is plain that it does one of two things, that it does not change the power of the Legislature or that it does. Now, if it does not, it is nugatory. It does no good. The Legislature's control now is satisfactory. If it does change it, then in what respect does it change it?" To that there can be but one general answer. It can not give the Legislature any more power than it has. That power has been decided to be plenary, and the universal testimony is that the development of the power now existing in the Legislature has brought the State of New York to the very highest rank amongst the states of the Union. It can then have but one effect. It must restrict the power of the Legislature, and to that I am distinctly opposed, and I believe that the passage of this amendment at its best can do no good, and at its worst it is leading us to evils which we only dimly apprehend, and which no man can measure. I think the people outside of this convention, as well as the delegates in it, are justly afraid of the effect of this amendment; and the wise thing for us to do is to turn it down.



Mr Clearwater — Mr President, if ideas did not change and the world did not advance, there would be no necessity for this amendment. But, as I have had occasion to say before from the floor of this convention, it is not only the duty of the convention to remedy existing evils but to forefend against evils which may come. This amendment crystallizes in the constitution precisely what the Court of Appeals has decided is the function of the State. That is a judicial decision, subject to change by legislative enactment, but it can not be attacked if written in the organic law. Education of the children of this State is a state function today. Tomorrow the Legislature may decide that it is not a function of the State. One of the objects of this amendment is to make it a state function forever, or so long as this constitution exists. Now, sir, this amendment was framed after the most unusual and remarkable consultation held in this building during the life of this convention. After the convention had listened to the eloquent characterization of the report of the committee on education by the gentleman who preceded me, the committee invited the attendance of gentlemen representing every variety of faith present on the floor of this convention, every phase of thought interested in problems of education. After a thorough discussion, where all the divergent views were candidly expressed, where all the haunting fears which had been suggested were fully developed and considered, every one of those gentlemen, representing all shades of belief, all shades of thought upon the subject of education, agreed upon this amendment as it is framed and presented here. Now, sir, there are no phantoms here. All the suggested fears are chimerical. I will not say that they are summoned from the vasty deep to assist simply in defeating this amendment, but they are destitute of any solid foundation. The children of today, sir, are the potential State of tomorrow, and it behooves a great commonwealth to write into its organic law exactly the provision we have here. "The state shall continue its supervision and control of the education of children in its free common schools." Does anybody want to lessen that? I think not. "And shall exercise such supervision and control elsewhere than in such schools as it now possesses." What is that control? Simply to prescribe a minimum standard of education which shall conform to the most modern conception of the treatment of education.

Mr Mandeville — As a member of this committee, I approached this subject with all the fear that has been expressed upon this floor. And yet I know, and we all know, that it is a very delicate subject and it would be best to let it entirely alone unless there is some good purpose to be served by this amendment. The expressions of Mr Cobb, of Mr O'Brian of Buffalo and others, I am sure have occurred to every man here and will occur to him, and must be answered before he votes. The reason for this amendment is not to disturb anything; on the contrary, it is to leave everything as it is. It was brought up and is now brought up because of the anxiety of the department and the anxiety of others that the conflict which is growing and growing in volume between the municipalities and the State might be settled, the municipalities asserting the right to control education and the State asserting a like right. The courts have decided that the State has that right and if we could be sure that that condition would prevail during the life of this constitution we would say nothing. But the decisions are based upon statutes which may be changed. Therefore, for the purpose of cementing and securing into the





John B. Stanchfield

structure of the State the right to control its schools, the committee proposed this plan. The plan says that the State shall continue, as against the municipalities, as against any civil division of the State — that the State shall have the right to control education. As to its own schools, paid for by itself, surely the State has the complete right and no one doubts it. As to other schools outside of that definition, the State retains the right, and always should retain the right, to see to it that the education in those schools is sufficient to qualify the children for citizenship. In order to give the State absolute right as against the municipalities, as against the city of New York, as against all other cities where local authorities seek to control educational functions, we offer this amendment. I recognize that it is a delicate ground which we are treading upon; that the less that is said, the better it is. I see no fear and no danger in the amendment as proposed. The State shall continue the control of its own schools, and there shall be no derogation of that control, and in all other schools it shall retain at least the control which it now has. That is satisfactory. It accomplishes the good purpose of securing state control without interfering with the control of the municipalities.

Mr J. L. O'Brian — The point that disturbed me, and I want to get your opinion on it, is this: the present constitution says nothing about control or supervision of schools, of private schools. That being the case, do you not think that you are putting in the new constitution, as you propose, a clause that the State shall continue to exercise its present control; that you, in fact, impose a constitutional limitation for the future upon that extended control, because, whereas the present constitution has no such limitation, you provide that, as to the future, the State shall exercise, inferentially, the present control?

Mr Mandeville — Mr Chairman, I quite recognize the point and yet I can not see the force of it. It is my opinion that as that control is now by statute only, it is better to cement that statute, that we shall have at least that minimum control at all times.

Mr Stanchfield — It is perfectly apparent from the debate that has taken place around this circle that there is a wide divergence of opinion among lawyers — and there are many distinguished lawyers in this body — as to what is the effect of this proposed amendment. If Judge Clearwater be right — and, that he is right upon the contention, I am prepared to concede — that the court of last resort in this State has held under the existing provision of the constitution that there is now vested in the State all required powers to look after the education of the children of the State, I move, in concluding this debate, Mr President, to recommit this amendment to the committee of the whole and end the debate with that motion.

Mr President, I move that at the present time we terminate debate upon this interminable subject and recommit the provision to the committee of the whole.

The President — All in favor of that motion will say Aye, contrary No. The Chair is in doubt. All in favor of recommitting will rise, and remain standing until counted. The secretary will count. The gentlemen will be seated. All opposed, will rise. The gentlemen will be seated. The secretary will announce the result.

The Secretary — Ayes 80, Noes 50.

The President — The Ayes have it and the motion to recommit is agreed to.

In speaking on amendment no. 822 relating to county government and the power and duties of certain county, town and village officers, Hon. F. L. Young of Ossining made the following reference to education (Record, p. 3796) :

My thought is not embodied in this bill; but, for instance, I have for a long time felt that matters of education in a county may better be committed to a county board of education; that matters of health in the county could better be committed to the county board of health, and so on down the line. This bill does not contemplate it. I merely speak of that as an illustration of a tendency into which my experience leads me.

In the record of September 10th is the report of the committee appointed by the convention to prepare and report a form of address to the people of the State. In such report, on page 4361, is the following reference to public education :

XIII. We leave unchanged the provisions in the present constitution requiring the State to provide for the maintenance and support of a system of free common schools wherein all the children of the State may be educated, and forbidding the use of the property, credit or money of the State directly or indirectly for the aid or maintenance of any school or institution wholly or in part under the control or direction of any religious denomination.



## SCHOOL LEGISLATION

The Department has considered carefully during the year the enactment of a general city school law and also of the township system. Measures were introduced in the Legislature similar to those suggested in the annual report of last year. They were introduced for the principal purpose of having them printed for distribution, of centering public opinion upon the desirability of this legislation, and of giving teachers, school officers and the public the opportunity to criticize the propositions and to offer such suggestions for the improvement of the measures as might seem desirable.



Field day exercises, third supervisory district, Erie county, June 1915. Address of welcome.

## SCHOOL PICNICS AND FIELD DAYS

For several years we have been urging district superintendents and school authorities throughout the State to create more interest in the social side of school work. We have recommended school field days, athletic meets, town commencements for all the rural schools in a town, meetings by supervisory districts, or counties even, to which the public is invited. Many superintendents have organized work of this kind. In many towns closing exercises have been held at a central schoolhouse and all the schools have joined in appropriate exercises. Those pupils who have completed the eight-year elementary course of instruction are given diplomas and those from the several schools who have become entitled to prizes are awarded such prizes at these exercises. In many cases there is an exhibit from each of the schools. A prominent member of the Legislature told the writer of this report that one of the most interesting events which he had witnessed in a long time was the town commencement of the several rural schools in one of the towns of his county. Much interest may be aroused in the school work when pupils enter upon the year's work in September if they know that at the end of the year the best work of the school will be exhibited at the town commencement. Parents and the public generally become interested and will cooperate with teachers and school officers in providing the equipment necessary to give the children the best possible opportunity in competing with the pupils of other districts throughout the town.

Some of the district superintendents have held similar meetings for their entire supervisory districts. These meetings have proved to be the leading events of the county and have often created as much interest and brought as many people together as a county fair. The educational system of the State would be greatly stimulated if each of the 207 supervisory districts of the State held such meetings. The accompanying picture shows how two small rural schools may unite for a school meet.

## ROCKLAND COUNTY FIELD DAY

One of the most successful school field days held in the State was one under the direction of Superintendent George W. Miller of Rockland county. Superintendent Miller describes it as follows:

The people began to gather about 7 o'clock in the morning. They came from all parts of the county, by train, stages, automobiles and on foot. They brought their lunches with them and the picture presented by these picnic





Part of the parade



One of the floats

School field day at New Paltz, Ulster county

parties at the noon hour as they filled the grandstand and dotted the field here and there was a pretty one. Enthusiasm and cooperation characterized the day throughout. Everyone was merry and the spirit of good fellowship was evident on every side. The bringing of the parents and children of the various communities of the county into pleasant social contact was no small factor in the success of the day. It arouses a wholesome spirit of cooperation. More than 1000 people were in attendance.

#### ULSTER COUNTY FIELD DAY AND PLAY PICNIC

The New Paltz State Normal School was largely instrumental in the organization of the Ulster county field day and play picnic of rural schools. The principal and faculty of that school work with the district superintendents in maintaining and operating this organization. A large number of the seniors of the normal school go into the surrounding rural schools during the fall and spring. The main purpose of these visits is to interest the children in folk dances, games and outdoor exercises of all kinds. In some instances each school receives three visits. They do outdoor work and indoor work. More than that the teachers very frequently call upon the normal school seniors to tell them what they have new in the way of devices and methods for other lines of school work. The normal school seniors ordinarily go in pairs and they accomplish a wonderful service. The principal of the normal school frequently receives letters from interested patrons expressing their appreciation of the work that the seniors do. They cover a territory nearly 25 miles long, and are seldom able to go to all the schools that ask for their help.

The New Paltz Normal School is rendering a very great service to the rural schools of Ulster county in the voluntary performance of this work. For the benefit of school authorities in other counties the program and plan of work of the Ulster county organization is given here. It is as follows:

### Tenth Annual Field Day and Play Picnic

OF THE

Rural Schools of Ulster Co., N. Y.

New Paltz, N. Y., June 5, 1915

The Country School Athletic League emphasizes the value of play. It holds that properly supervised play is one of the important concerns in every household, of every school and of every community. Play makes for health and contentment; it aids in the development of a wholesome, social spirit and of

a more kindly community life; it stirs the mind to keen activity and trains the individual to take the initiative, to act promptly and energetically and to cooperate for the good of all.

To bring many of our country communities into pleasant social contact and give our people, young and old, opportunity to participate in the honored sports and amusements, to learn new and inspiring games and to become acquainted with good, practical methods of physical training, is the purpose of our field day.

All games and events are open to every child in the county, no registration or previous notice needed. Every child should feel that this field day is instituted for his or her special benefit. All should take part in as many games and events as they can without injuring themselves.

This year, 1915, the effort will be continued to get more girls interested. Read the fourth page and notice the exercises for bronze and for silver buttons for girls. The exercises are very valuable and can be carried out at home or at any school. The athletic events are sufficient in number and the play events are increased. The New Paltz pupils will not enter the competitive athletic events, thus making more room for others.

Last year there were more play and more fun than ever before.

### LET US BEAT THE RECORD IN 1915!

#### PROGRAM

9.30 10.00 o'clock — Try-outs

Tennis court — Contests for girls for buttons when girls have not tried at home. See last page. Miss Swan

South campus — Contests for boys for buttons when boys have not tried at home. See last page. Mr Fuller, New Paltz  
Mr Walker, Cottekill

10 o'clock — South Campus

a Running high jump — Boys under 100 pounds

a Running high jump — Boys over 100 pounds

Mr Walter, Gardiner  
Mr Matteson, New Paltz  
Mr McCausland, New Paltz

10.30 o'clock

a Eight pound shot put — Boys under 100 pounds

a Twelve pound shot put — Boys over 100 pounds

Mr Cain, New Paltz  
Mr Tayler, Marlborough  
Mr F. E. Bennet, Highland

10.00-11.00 o'clock — South Campus

a Chinning and vaulting on bar

Mr Evers, New Paltz  
Mr McDermott, New Paltz

a Basketball throw for girls

Miss Lillian Smith, New Paltz

a Beanbag throw for girls

Miss Devine, Rifton

a Post relay race and final contest

Miss McManus, Milton

10.00-11.00 — Tennis Court

Games and relay races for small boys and girls. It is hoped that a very large number from all the schools will gather for a real good time.





The girls' sprint



The pole vault

School field day, New Paltz, Ulster county



The rabbit race

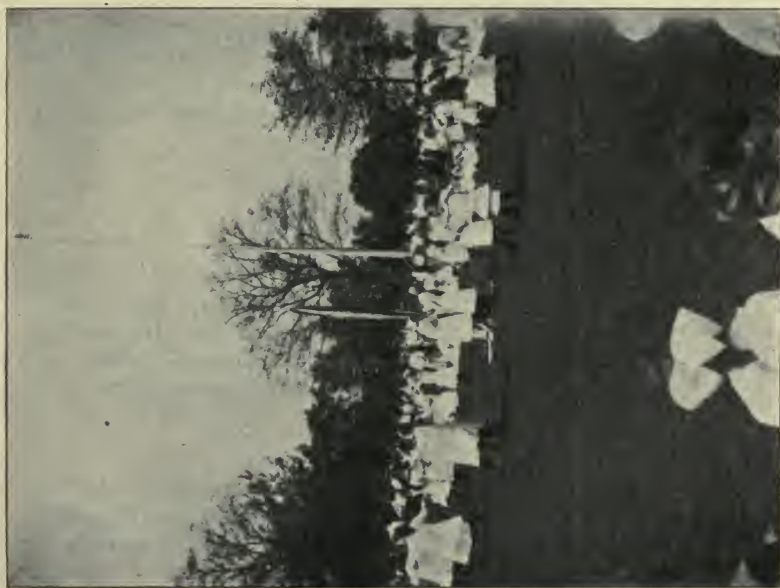


The tug of war

School field day, New Paltz, Ulster county



On the playground  
School field day, New Paltz, Ulster county



The May pole dance



11.00 o'clock

**GRAND PARADE**

To start from the grounds

INTERMISSION

1.30 o'clock—Tennis Court

*a* Exhibition games and contests by the boys and girls of the various schools of the county. Let each school come prepared to do some one thing, if not more. Schools will not compete with one another. It is hoped that there may be a varied exhibit and the following incomplete list is offered only as a suggestion: tug-of-war, running broad and high jumps, hop-skip-and-jump, rolling target, bean bag throw, relay races, folk dances, three-legged races, crab races, sack races, obstacle races, etc.

Officials:	Miss Swan, New Paltz	Mr Garrison, Kingston
	Mr Shear, Poughkeepsie	Mr Cain, New Paltz
	Mr Walker, Cottekill	Mr Warren, Milton
	Mr Shiels, Rifton	Mr Matteson, New Paltz
	Mr Fuller, New Paltz	Mr Davis, Port Ewen

2.30 o'clock—South Campus

<i>a</i> Baseball throw for girls	Mr Benedict, New Paltz
	Mr Marsh, Highland
	Mr Cullen, Kingston
<i>a</i> Running broad jump—Boys under 100 pounds	
<i>a</i> Running broad jump—Boys over 100 pounds	Mr A. B. Bennett, New Paltz
	Mr Longyear, Connelly
	Mr Minard, Newburgh

3.00 o'clock—River Road

<i>a</i> Forty yard dash for girls, 5th to 8th grades inclusive	
<i>a</i> Sixty yard dash for boys, under 100 pounds	
<i>a</i> One hundred yard dash for boys, over 100 pounds	Mr Matteson, New Paltz
	Mr Decker, High Falls
	Mr Weaver, Highland
	Mr Goewey, Wallkill
	Mr Newton, Milton

3.30 o'clock—River Road

<i>a</i> Bicycle race—Boys under 125 pounds	Mr Woolsey, New Paltz
	Mr Schoonmaker, Plattkill
	Mr Radcliffe, Clintondale
Baseball—Normal Campus	Mr Fuller, New Paltz
	Mr Morrison, Newburgh

**Band Music All Day Long***Preliminary Notes and Suggestions*

It is hoped that every teacher will make a successful effort to get the boys and girls interested in outdoor sports. Now is the time to talk and act. This is well worth doing, entirely apart from field day. On the last page of this circular will be found a list of events that the boys and girls can practise at home, together with the proficiency that the average may attain. Try to work your pupils up to the standard on your own grounds.

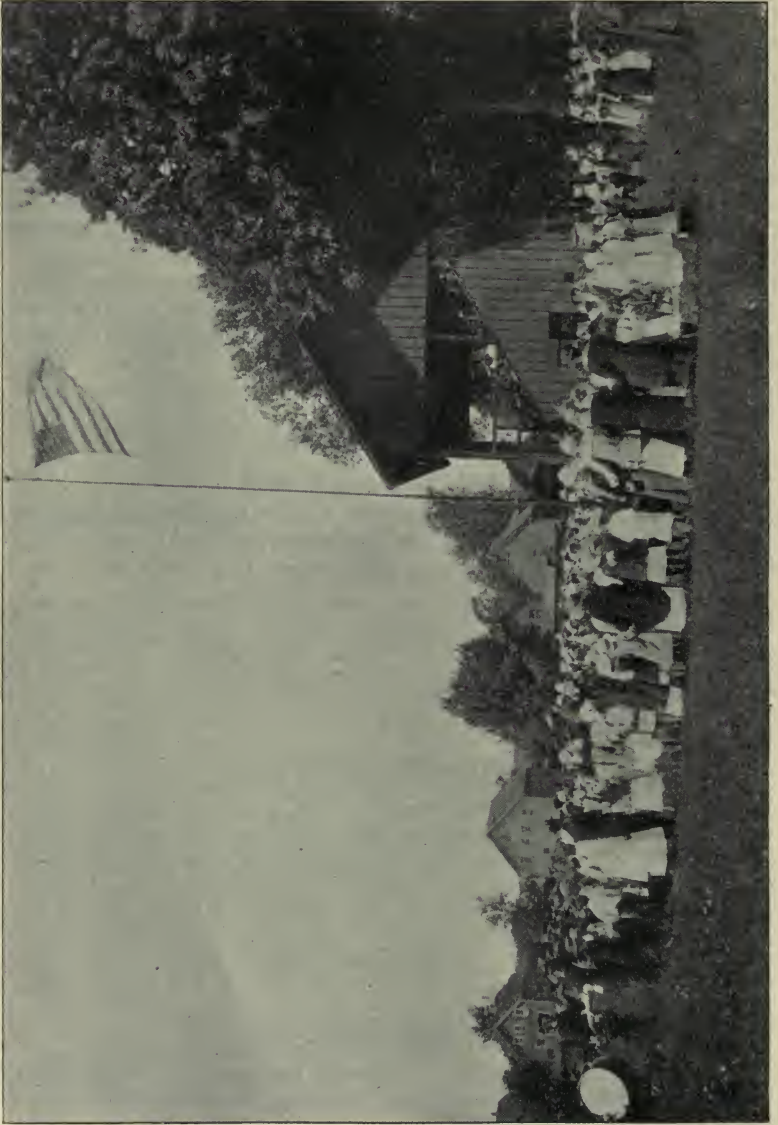
It is hoped that everyone will attend the field day. Come with the members of the family and bring your lunches. Wraps and lunches will be checked free of charge and small children will be cared for, whenever so desired, in the day nursery. Sandwiches and hot coffee will be provided at a nominal price for those who may desire them.

Those who are not familiar with the rules governing sports should send 10 cents to American Sports Publishing Company, 21 Warren st., New York City, for a copy of the Official Handbook of the Public Schools Athletic League.

First, second and third place badges will be awarded in the events marked (a)

**Athletic Badge Competition***Country School Athletic League, Ulster Co., N. Y.*

The following are the events for school ground competitions, with the standards that the average pupil can attain. Bronze buttons are awarded boys under 13, silver buttons, boys under 15, gold buttons, boys under 21.



Field day exercises, third supervisory district, Erie county, June 1915. Getting ready for the flag salute.





Field day exercises, third supervisory district, Erie county, June 1915. Hoe and rake drill.

## EVENTS

<i>Boys</i>		Required standard
Boys under 13	Chinning	4 times
	Standing broad jump	5 ft. 9 in.
	60 yard dash	9 2.5 sec.
Boys under 15, at least 13	Chinning	6 times
	Standing broad jump	6 ft. 6 in.
	100 yard dash	14 sec.
Boys under 21, at least 15	Chinning	9 times
	Running high jump	4 ft. 4 in.
	220 yards dash	28 sec.

*Girls*

For bronze button

Baseball throw	75 feet
40 yard dash	6 sec.
Balancing exercise—Walk 50 feet on tiptoe, carrying a yard stick upright with a book balanced on the end of it.	

For silver button

Bean bag throw—Use a bean bag 9 inches square filled with two pounds of beans. Nail a barrel hoop on a tree or post 10 feet above the ground. Stand directly in front of the hoop and 12 feet distant. Use both hands and toss (underhand) the bag into the hoop three times out of five.

60 yard dash 10 sec.  
Balancing exercise—Place a light book on the crown of the head; place the hands on the hips; place the heels together with the feet at an angle of 90 degrees; rise on the toes; from this position bend the knees until the body touches the heels five times. The knees should be turned outward over the toes and the trunk should be erect throughout the exercise.

The girls contests have no age or weight limits. They are open to girls below the first year of the high school. There may be two trials for each event. A girl who holds a bronze button may try for a silver button.

## REGULATIONS

This competition is to take place at each school under the direction of the teacher and a representative of the central committee.

Only those whose deportment and scholarship are satisfactory may compete.

Boys may run barefoot.

There shall be but two trials in chinning, two in the dashes and three in the jumps.

Chinning—The boy must extend himself full length, arms straight, before and after each pull up; he must bring his chin fairly over the bar each time. The feet must not touch the floor or ground.

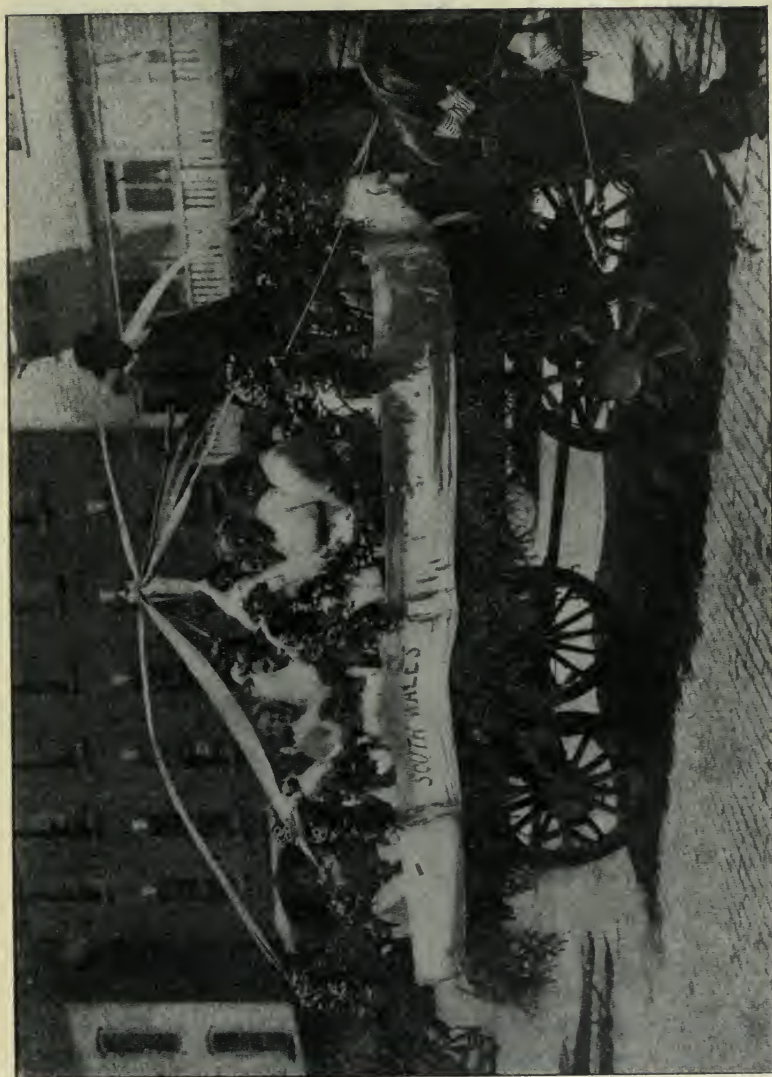
Jumping—In the high jump use a stick, not a rope.

Jumping—See rule XXV and XXVII, Official handbook, F. S. A. L.  
Running—Rule VIII.

At New Paltz anyone may enter the events, which he is entitled to enter, according to his weight, whether he has a button or not. Let everyone get interested.

When your pupils are ready send to New Paltz for a judge and get your buttons and badges. Miss Swan, physical director, will be pleased to visit the schools and help the teachers in the play events, if any teachers so desire.

Those who do not have a chance to earn buttons on their own grounds may make the trials at New Paltz, June 5.

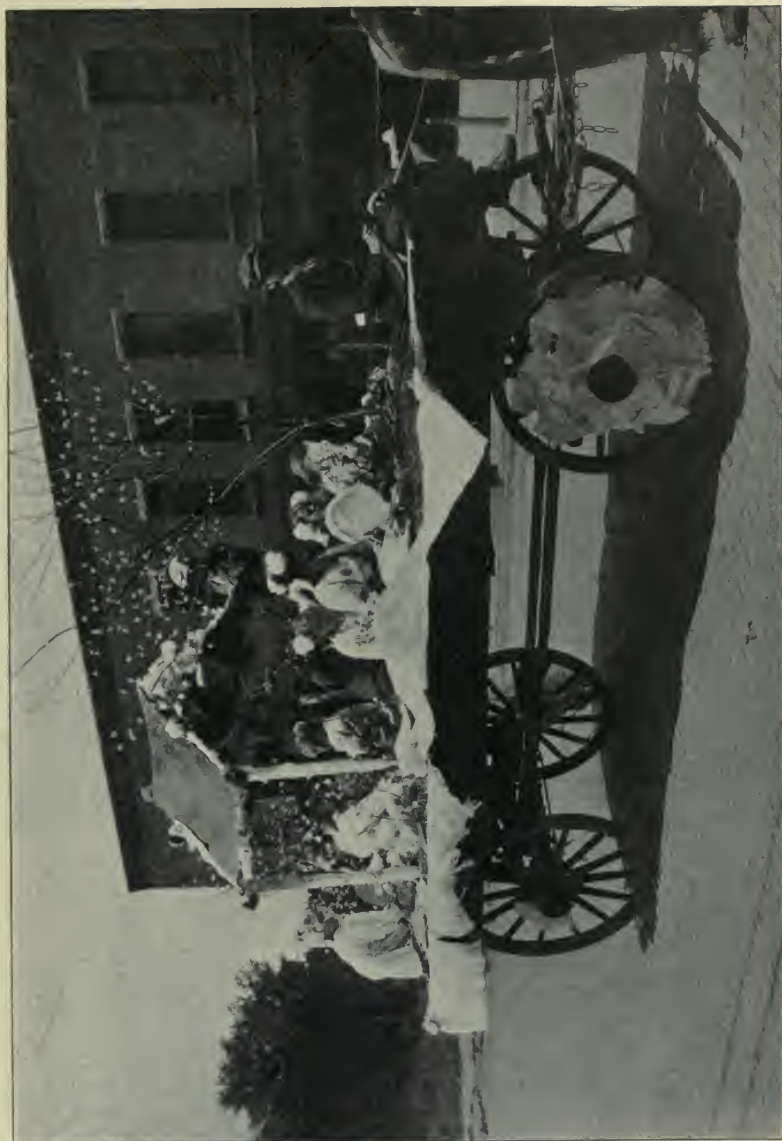


Field day exercises, third supervisory district, Erie county, June 1915. Float awarded first prize.

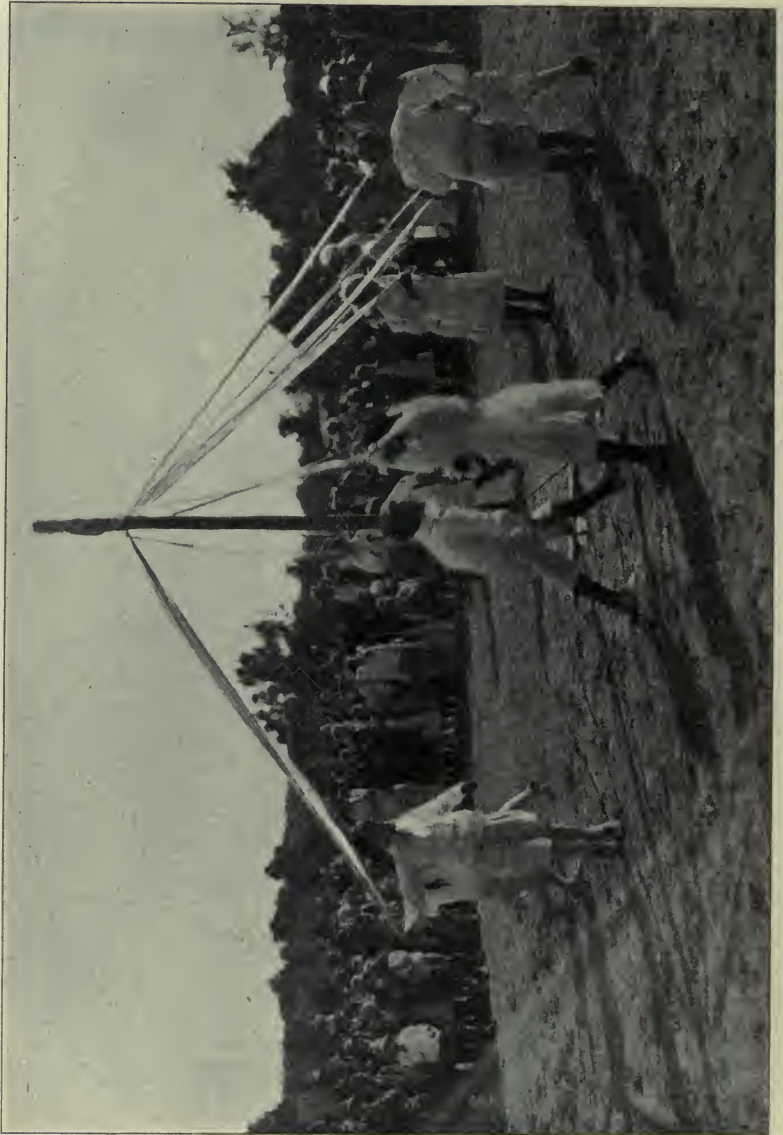




Field day exercises, third supervisory district, Erie county, June 1915. Float awarded second prize.



Field day exercises, third supervisory district, Erie county, June 1915. Float awarded third prize.



Field day exercises, third supervisory district, Eric county, June 1915. May pole drill.





Field day exercises, third supervisory district, Erie county, June 1915. Members of the honor roll class.



The children of school district 6, White Creek, join with the children of district 4, White Creek, Washington county, at the schoolhouse in the latter district for a picnic



The start in the cross-country run



Folk dance

Rockland County Public Schools Athletic League





May pole dance



Athletic meet

Rockland County Public Schools Athletic League



Field day, Rockland County Public Schools Athletic League, 1915



Basketball, Upper Nyack School, district 9, Clarkstown, Rockland county



Playground equipment, Upper Nyack School, district 9, Clarkstown, Rockland county



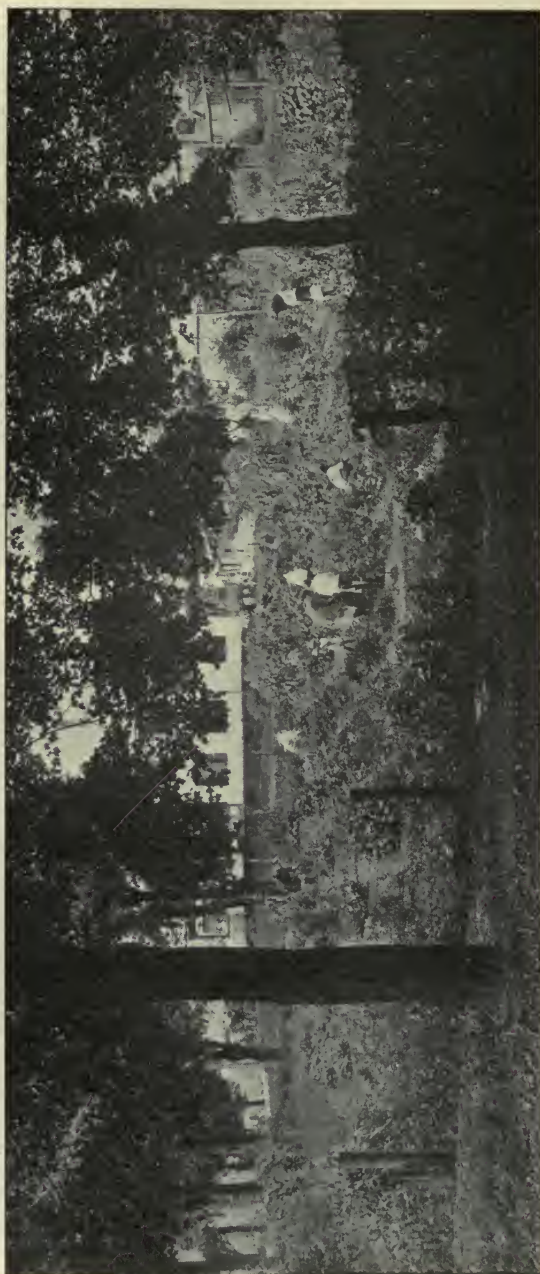


Football



Basketball

Athletics in school district 9, Clarkstown, Rockland county



A school garden in district 15, Ramapo, Rockland county

## AGRICULTURE AT MARLBORO, ULSTER COUNTY

Principal David D. Taylor of the public school at Marlboro has created an unusual amount of interest in agricultural work. Marlboro is located in a great fruit center. The growing and cultivation of vegetables is also an important industry. Principal Taylor has endeavored to interest all the children of the school, and the people of the entire community, in agricultural education. He induced the people to see that the school might be made a great instrument in promoting agricultural interests and that it is to the advantage of the farmers in the community to cooperate with the school in its effort to relate the work of the school to the general work of the community.

Early in the year Principal Taylor announced that at the end of the year an exhibit of the vegetable and fruit products of the vicinity would be made at the schoolhouse. He offered to permit any child in the school to place on exhibition any vegetables grown and cultivated through their own care. He made a similar offer to all children in the school with reference to the growing of fruit. It was further specified that this work was not to be allowed to interfere in any way with the regular book work or courses of study in the school. This work was to supplement the other work which had usually been done in the school.

It was agreed to single out one vegetable which should be given special attention through the year and special prizes were to be offered for the growing of such vegetable. The grange was interested and three prizes of \$5, \$3 and \$2 respectively for the first, second and third best exhibits were offered. More than 150 pumpkins were exhibited and more than 280 plates of fruit. Principal Taylor writes that "loads of other farm products were brought to the exhibit, viewed by the public, passed upon by the judges, and ribbon prizes awarded for the best exhibits."

The accompanying pictures illustrate some of the exhibits.





Pupils' pumpkin exhibit, town of Marlboro, Ulster county



Pupils' agricultural exhibit, town of Marlboro, Ulster county



Agricultural exhibit



School exhibit

Town of Marlboro, Ulster county



## BOYS' AND GIRLS' CLUB WORK IN AGRICULTURE AND HOMEMAKING

Following out the recommendation contained in the report of 1913-14, the Department requested the president of the Association of District Superintendents to appoint a committee which should ascertain what had been done in the boys' and girls' club or contest work in the field of agriculture and homemaking, and to recommend what ought to be done in the light of such findings and conclusions. A letter addressed to all the district superintendents brought the information that about one-half of the superintendents had already organized this work in some form and practically all reported in favor of some activities similar to the boys' and girls' club or contest movement, provided that such work may be more closely related to the daily activities of the school than has been the club work of the past.

The tabulation below gives an idea of the number of schools and pupils engaged in agricultural and homemaking clubs or contests organized by the district superintendents for the year 1914-15.

LINE OF ACTIVITY	SUPERVISORY		
	DISTRICTS	SCHOOLS	PUPILS
Potato . . . . .	40	498	1551
Garden . . . . .	32	321	2212
Bread or other baking . . . . .	28	153	860
Corn . . . . .	27	388	1604
Poultry . . . . .	15	46	760
Canning . . . . .	13	40	138
Sewing . . . . .	13	35	215
General agriculture . . . . .	12	174	1181
Flowers . . . . .	10	30	450
Domestic science . . . . .	10	37	500
Tomato . . . . .	5	16	36
Live stock . . . . .	4	21	250
Crops . . . . .	1	10	150

The following tentative suggestions were made by the committee as to the division of effort toward the end of unifying the possible agencies concerned in perfecting a plan of instruction:



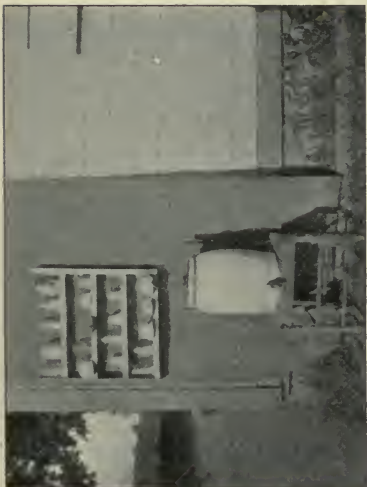
Some things the pupils do in district 5, Plattekill, Ulster county



Seventy varieties of native wood



Lesson in first-aid



Sanitary water jar and individual cups



Products of the garden

District 5, Plattekill, Ulster county



COOPERATING AGENCIES	FIELD OF EFFORT	RESPONSIBLE FOR
Education Department..	Organization.....	1 Syllabus 2 Plans of procedure 3 Project record blanks 4 All uniform forms and blanks 5 Correspondence with superintendents on organization plans
District Superintendents.	Local supervision.	1 Local announcements 2 School supervision 3 Project supervision
State College of Agriculture.....	Subject matter...	1 Bulletins and subject matter 2 Specialists at teachers meetings 3 Correspondence with teachers on subject matter

## ARDONIA SCHOOL

The Ardonia School is located in district 5, town of Plattekill, and the teacher is Miss Flora Malcolm. Miss Malcolm is a graduate of the New Paltz State Normal School and lives near the school where she teaches. She has taught in that school for several years and the results she has obtained are very largely due to the fact that she has taught so long in the one school and has therefore had an opportunity to carry out a definite program.

Ardonia is a good farming section given up very largely to fruit raising. A considerable number of Italians have moved into that section so that the school children are largely of foreign descent but of American birth. Miss Malcolm found a school building of the usual country type with a small school ground very largely given up to stone and rock. She has worked through the children almost entirely and they have done practically all that has been accomplished. Of course the parents have cooperated with the teacher but the interest has come through the children.

The children have cleaned the stone and rock off the school grounds. The district has purchased another lot doubling the size of the grounds. The teacher has introduced real, live nature study having to do with the products of that section. She has introduced manual training so that the children make practically everything they use. She has introduced domestic science so that the children provide hot drinks at noon and do their sewing, etc. She has introduced a practical knowledge of first aid to the injured and personal hygiene. She has increased the library from ten volumes to nearly five hundred and has provided through manual training most of the apparatus that may be needed in a rural school. All this in a one-room school building with a small storeroom in one end. Her work in nature study has been so thorough that many Italians in the district have been prosecuted for shooting birds with the result that last year a very determined effort was made to oust her from the school. However, she was overwhelmingly indorsed by the residents of the district when the school meeting was held. The pupils hold school festivities occasionally. These of course serve a valuable function in a social way but more than that they provide some of the funds that go to purchase things that can not be made. Miss Malcolm has also organized a mothers' club that fulfils the ordinary functions of such an organization. She is doing on her own initiative some of the best work that can be found in our rural schools.

The Ardonia school accomplishes much as a social center, as that term is generally understood, but the school itself certainly is a social center of the first class in so far as it binds the children together for mutual helpfulness and ties up the families to the school. There is, of course, another kind of a social center in which the schoolhouse serves as a meeting place for everybody in the district for all kinds of functions.



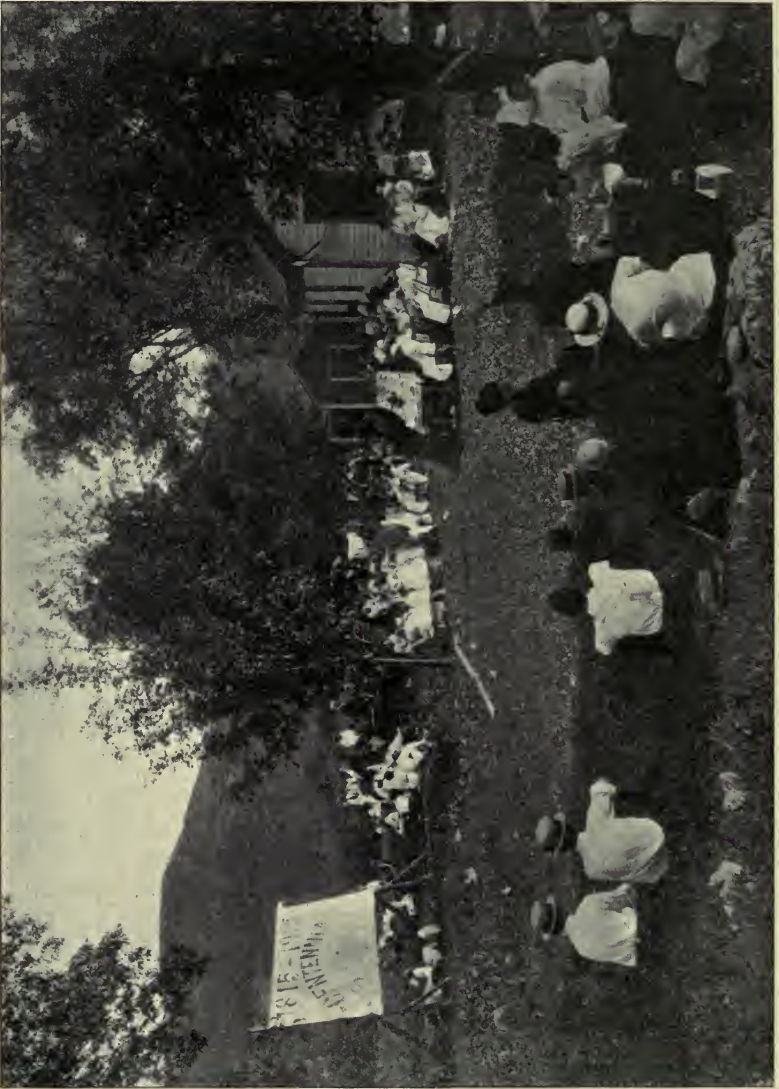
## ONE HUNDREDTH ANNIVERSARY OF BLIND BUCK SCHOOL

On August 11, 1915, the one hundredth anniversary of the organization of school district 10 of Salem, known as the Blind Buck district, was celebrated on the school grounds. The name given to the district grew out of the fact that there was a legend that a blind buck had its pasture grounds in the vicinity. While the school district was organized August 11, 1815, a school was maintained there at an earlier date. The interest of these pioneers in public education is shown by the action taken at the annual meeting of the district in 1815. Schools were not free then but the inhabitants voted free tuition to children whose parents were not able to pay tuition. The report of the commissioners of common schools for the town of Salem for the year 1830 shows that that school had been maintained for nine months. Forty children attended the school that year.

The original school building is still in use, though it has been repaired and changed as often as the boy's traditional knife that had had five new blades and six new handles. About three hundred people were present at the anniversary. The majority of them were former teachers and pupils of the school. Eleven former teachers attended the anniversary. Many pictures were taken, made up of former teachers and such of the pupils as were present. Henry Beattie, who taught the school about forty-five years ago, was photographed with fourteen of his pupils. Mrs. J. J. Beattie, who taught the school six terms, from 1871-1873, was present with fifteen of her pupils. Dr. William B. Madison, who taught the school in 1873, was there with ten of his pupils. Miss Jennie Connor, who taught the school for twenty terms, had fifty of her pupils present. Addresses were made by Superintendent Rich, Dr. Sherman Williams of the Education Department, Rev. D. C. Stewart, Rev. J. J. Barrett, Rev. Frederick T. Ashton, Rev. H. A. Durfee, Henry Beattie and Col. S. W. Russell. Letters were read from many former teachers and pupils now representing five different states, and the territory of Alaska.

It is quite remarkable that one small district should have sent forth so many young men and women whose after life honored their old home, as is shown to be the case by the many letters written by former residents of the Blind Buck district.

Among the letters read from former pupils in this school was the following from Mrs. Schaffer to Miss Jennie McFarland:



Blind Buck School, district 10, Salem, Washington county, celebrating its one hundredth anniversary, August 11, 1915. At the left of the picture may be seen Dr Sherman Williams delivering an address.

*Iowa City, Aug. 4, 1915*

DEAR JENNIE:

What a train of memories come up when the appeal for a letter, for the 100th anniversary of the Blind Buck School, came from Miss Connor.

I wish it were possible for me to be with you at the pic-nic, but you know, "Earth separates as well as Heaven," and as I can not go, I will write and bore you with my letter of remembrances.

I remember the first teacher I ever went to. It was in the old schoolhouse, that I presume my father and mother had gone to school in, for it was certainly an "old timer," when my education began. It stood where the present building stands. The seats went around the room, one long seat, with high desks in front, and the big boys and girls sat on it, said boys were Charlie Thompson, Billy Fairley, John and Billy Thompson, Archie McNaughton. In a smaller row in front of them, sat Theodore Sanderson, Dannie McFarland and Edwin McNaughton. The big girls on the back seat were Sarah, Mary and Margaret McFarland, Catherine Beattie, Nancy Jane Thompson and Nettie Stevenson, and in front of them, Esther McNaughton and Mary Jane Thompson. On the front seat, with no desk before us, the back of the seat away above our heads, our feet not touching the floor, sat Sarah Beers, Martha and Jany McFarland, Sake Thompson, "little Almira," as I was called at home, and Robert Thompson, who was always in our set, both in class and play.

Our teacher was Miss Jane Robertson, afterward Mrs Henry Lakin. We were taught to read from the spelling book: "She fed the old hen, The hen was fed by her," and it was illustrated by a very small hen, being fed by a small girl. Jane, Martha and Belle Robertson, three sisters, taught in the Blind Buck School, also three sisters, Mary, Lucinda and Abbie, from the Crowl family. Five young ladies, bearing the name of McFarland, taught at different times in the school.

In those days the teachers boarded around, and how we used to love to have our beloved teachers board at our house.

The next great event after I entered the school, was the summer the new schoolhouse was built. Miss Lucretia Clark was our teacher; we thought her a beauty, she had such pretty curly hair. The first part of the summer she taught in John B. Fairley's "corn house" and we thought it great fun. My, but the new schoolhouse was grand, and it certainly must have been well built, for it still stands a monument to those who built it. Very few of us are left who moved one bright summer day into the new building.

I have been thinking of our early teachers, Cousin Margaret McFarland, who laid the foundation of so many of Salem's boys' and girls' education, taught us long division. Margaret Cronin, a dearly loved teacher, and one of our best, taught us to skip about in multiplication. She would be marching up and down in front of our class, and would call out, "7 times 8 are how many? quick, quick, all together now!" That was a hard one to get quick, but we learned the multiplication tables all right.

There was a change in the methods of teaching after teachers from Washington Academy were employed. First came John McLean, then Margaret Cronin, David Crawford, Rosina Vaughan, Carrie Fox, Sarah Mary McFarland, Kate Beattie and others. Kate taught the summer the Atlantic cable





Blind Buck School, district 10, Salem, Washington  
county



Miss Jennie M. Connor and Miss Isabelle Noon and former pupils



Mrs J. J. Beattie and former pupils  
Blind Buck School centennial, 1915

was laid, and the excitement was great when the first message came from the queen. The bells were rung, and everyone was talking of the wonderful achievement. One little girl in our school, not quite understanding what it all meant, asked: "Has the queen come over?" "Yes," my brother Alex said, "come over in a wash bowl," and Alex's answer to her question has always been remembered by me, instead of the message sent by the queen.

When Sarah Mary McFarland, afterwards Mrs Dunn, was teaching, she was taken suddenly very ill, and the doctor saying she might have varioloid, her sister was sent to the school to find out how many of the children had been vaccinated. One very badly frightened little girl answered her by saying: "No! but I have been baptised." Later, the great Horace Greeley said he had never been baptised, but he had been vaccinated, and coming from him, it was thought to be a brilliant saying.

One thing I noticed the last time I was home, in the school yard, was a little mound that looked like the first flower bed we ever had. We commenced to have flowers in the school yard when Miss Vaughn was our teacher. Dear Miss Vaughan is still with us and loved by all.

I remember how we used to go for a pail of water, and get the big summer sweets that Mr Stevenson allowed us to have, if they fell while we were getting the water, or were lying on the ground, and sometimes, but not often, we would make one or two fall, when we dared. I wish I could speak of the first picnics we had, but I will not weary you with any more. I have enjoyed living over the old days and I am glad I am a Blind Buck girl yet — eat for me at the picnic, from

LITTLE ALMIRA



Dr William Madison and former pupils



## MEDICAL INSPECTION IN SCHOOLS

BY DR WILLIAM A. HOWE

The services of the state medical inspector were not available to the Department until February 1, 1915, or for only six months of the period included in this report. For that reason it seems best not to attempt to report so much on results accomplished during the year as to outline the purposes of the law and the definite plan of its enforcement which has been formulated.

While one of the first purposes of school medical inspection is to discover physical, mental and other defects of school children, yet this is but one of the initial steps. The thoroughness with which the medical examinations are made determines to a great extent not only the conditions found, but parental interest and cooperation.

Rapid, superficial or careless examinations justly invite criticism and predispose to the failure of the purpose of the measure. When such is attempted the attention of the examiner should be directed to the ruling of the Department against such a violation of professional duty.

The ordinary schoolroom, especially the one-room school, is not a suitable place in which to make a proper physical examination. Unless a private room is provided for the purpose the children should be taken to the physician's office where quietude, proper lights, and other equipment are available.

One of the most vital purposes of school medical inspection will be defeated unless we can utilize such agencies as may be possible to follow up the defects found, secure their correction, and prevent their recurrence. Far greater attention should be directed to the follow-up work. Much of the success of the great movement of health education will depend on our ability to correct existing physical defects and to teach the fundamental principles of healthful living. But little advantage will be derived from a physical examination, however complete, unless the defects found, with their predisposing factors, can receive proper corrective treatment.

Teachers and those in training for this work should be examined as to their physical fitness. Teachers must safeguard their own health, must recognize physical unfitness in children, be alert to detect unsanitary conditions in or about the school, and lead in the development of both strong minds and vigorous bodies.

Janitors have much to do with the physical well-being of teachers and pupils. They should be examined as to their physical fitness and should be taught how to perform their duties in an intelligent

manner looking to the protection of the health and safety of the children of the school. In many communities definite rules are prescribed for janitor service and regular reports are made to the supervising authorities.

School medical inspection will assist health authorities in the prompt recognition and suppression of any communicable disease or condition which might arise in the district. Too much emphasis can not be placed on this purpose of school inspection. Every teacher should be familiar with the early or suggestive symptoms of the various communicable diseases of childhood as published by the State Department of Health, and apply such knowledge in her daily inspection of the pupils under her instruction. The closest cooperation should be maintained between school and health authorities in the practical enforcement of this feature of school medical inspection. Every school medical inspector should regard it as one of his most responsible duties to assist the health officer along these lines of health work.

The medical inspector should cooperate with the principal or superintendent in the inspection of school buildings, grounds, water supplies, toilet facilities, heating, lighting, or any other condition which might in any manner endanger the health of teacher or pupil. We can not be too insistent in our demand for sanitary school buildings, suitable grounds, pure water supply, proper heating and lighting, and sanitary facilities of every character.

Parents are to be taught the real meaning of school medical inspection and their cordial cooperation in its practical application is to be enlisted. Parents should be taken more into our confidence in this work of health education. We should assure them that nothing would be undertaken for their children which we would not be willing to do for our own, and that our aim is to assist them by careful advice in matters pertaining to the health of their children. We should convince them that "safety first" for the child will be our guiding slogan in the campaign of health.

Children are to be taught the value of good health; how to acquire and maintain it; how to prevent many of the defects too often found among children; how to develop strong bodies and vigorous minds.

The school offers the greatest known field in which to teach successfully and apply much of our present knowledge of preventive medicine. It should begin in the first grade and extend through the school life of the child. It should be so conducted that the child will learn to live a life of health as a matter of habit. In other

words, health habits should be so inculcated into their early lives as to insure to them freedom from many of the ills and weaknesses to which they are now such easy victims.

School medical inspection should be standardized along the lines of some efficient system. The various educational and health authorities of the State and Nation should unite on some plan by which standardization, at least as to forms and methods, would be brought about. Special efforts will be made to accomplish this in New York State. A similar federal plan would prove of great value to the movement of school medical inspection or health education. In doing this I believe also a card might well be prepared by which every child might be credited by improved health conditions, or by which certain defective conditions would be charged against the child. I believe a child should be credited with good health just as much as with good school attendance.

School medical inspection should mean health education. It should correlate various agencies in an educational campaign of health. It should be made an intrinsic part of the entire educational system of the State and the Nation. It should become a special line of instruction in our medical and dental colleges, in our normal schools and colleges, in our training classes, in our training schools for nurses, in our schools for physical training, and in our academic institutions, that men and women especially prepared for teaching health may be properly equipped to meet the greatest responsibility with which we are confronted in education—the health and vigor of our children.

With regard to a definite plan for the enforcement of the medical inspection law, it should be borne in mind that this is an educational law and its enforcement is entirely under the direction of the school authorities. Boards of education and trustees should thoroughly familiarize themselves with its provisions that they may fully understand its purposes and appreciate their duty so to enforce the law that practical results will be accomplished. In the enforcement of this, as well as any other statute, its intent or purpose should be kept in mind. Its real measure of success will be determined not by the enforcement of any one of its many wise provisions but the sensible application of all of them.

The law clearly states that the local health officer shall be appointed medical inspector unless it be to the interest of the district to appoint some other physician.

In the selection of the medical inspector the utmost care should be exercised to choose a physician interested in the health of chil-



dren. Boards of education and trustees are strongly urged against advertising for the lowest bidder or cheapest man to render this important service to the children of the district. The most competent physician in the community is none too good and the most thorough examination should be demanded. In return, trustees should be willing to pay the physician such fee for his services that he can well afford to do his best to contribute to the successful enforcement of this health measure.

A definite, businesslike understanding should be had between trustees and medical inspector as to what is to be expected of him and what compensation he is to receive. He should be required to submit regular reports to the trustees as to the progress of his work in the district. A copy of his annual report should be mailed promptly to the State Medical Inspector of Schools, Albany, N. Y. He should be regarded and consider himself the health director of the district or community he serves. The State Department will gladly answer inquiries from school authorities, or give suggestions, regarding the duties of the medical inspector.

Wise provision is made in the law for the services of the school nurse. Trustees or boards of education are empowered to employ a school nurse and her services are accepted as part of school inspection. School authorities are strongly urged to avail themselves of this privilege. The school nurse is destined to fill a long appreciated need in school medical inspection. She makes possible the accomplishment of many things otherwise impossible without her services. She frequently determines the success of school medical inspection in the community. She becomes a health teacher in the school and in the home. She brings the home and the school into closer contact with each other. She inspires the confidence of the parents in medical inspection; she proves of great assistance to the local physicians and dentists with whom she works in common. She frequently checks a threatened outbreak of communicable disease, and improves the sanitary conditions of the school-room. She establishes health habits both in the school and the home. It is to be hoped every supervisory district will utilize the services of one or more nurses within a reasonable time. Every district having 1000 or more pupils should have a nurse to assist in its school inspection or health education.

The form of health certificate to be recommended was prepared after examining those in use in many cities. It was submitted to the State Commissioner of Health and approved by him. As will be noted it is divided into three parts: part 1 to be filled by the

teacher or nurse; part 2 to be filled by the medical inspector; and part 3 to be filled by school authorities, nurse or medical inspector.

In school inspection it is very necessary that the teacher should take an active interest in its enforcement. Next to the mother of the child, the teacher is the most favorably situated to study the health and physical condition of the pupils and to improve both. By this means the busy physician is saved much time in the details of the history of the child.

The medical inspector should be utilized only for professional services. He should not only carefully examine the child but clearly indicate defects found and recommend that proper attention be given to such defects. The pupils relief record, or part 3, will indicate the success with which the work is being carried on. This is of vital importance to the whole system of school medical inspection. Medical inspectors, nurses and school authorities should study carefully the attention being given to existing defects, and exert their united efforts to make the most of this important feature of the work.

Though the law is permissive in its provision for the physical examination of the teacher, there should be no question of the wisdom of such steps being taken. It is a duty which the teacher owes to herself to be assured of her physical fitness. To a great extent it measures not only her happiness but her efficiency as a teacher. Her compliance with this intent of the law also encourages others to follow her example. Unless the teacher desires to be examined by her own physician the medical inspector of the school should make the examination and issue to her the certificate of health.

As previously stated, much of the success of school medical inspection depends on our ability to correct existing defects and to prevent their recurrence. So far as known the following systematic plan, now in successful operation in many sections of the State, is the first of its kind in this or any other country. It is of course appreciated that much of such free service has been rendered for years by physicians, dentists and hospitals, but never before has an effort been made to organize it and to transfer it from the supervision of the poor authorities to the school authorities.

**MEDICAL INSPECTION****CHILDREN'S SERVICE HOUR**

The hour of  
 .....a. m. to.....a. m.  
 .....p. m. to.....p. m.  
 on.....is hereby designated as  
**Children's Service Hour** when free service will be rendered to  
 children referred to me by the school authorities, in territory  
 accessible to my office.

.....M. D.

[Name]

.....

[Address]

*This designation is revocable at the pleasure of the subscriber.*

During the first year of the operation of this system more than 800 hours a week were designated for free service to deserving children by physicians, surgeons, oculists and other specialists of the State. The response for this relief service was so liberal and general as fully to justify the belief that no deserving child suffering with a defect of any nature need go uncared for so far as medical, surgical or special attention is concerned.

Among those who have so willingly tendered their services to this health movement are many of the leading practitioners of the State, in the various special lines of the profession. In the utilization of the plan the greatest care must be exercised by the school authorities not to abuse the privilege so generously placed at the service of the deserving child. In most instances, however, it is best to give the suffering child the benefit of the doubt. Being satisfied that the case is one deserving of the service, the following blank should be used on all occasions:



### CHILDREN'S REFERENCE BLANK

.....  
[Name of pupil]

.....  
[Parent or guardian]

.....  
[Address]

.....  
[Name of physician]

.....  
[Address]

.....  
[Children's hour]

This blank, when properly indorsed, will admit the pupil named above to the office of Dr. .... for free professional service.

Note carefully the hour of assignment and go at no other time.

When service is completed, pupil must promptly notify subscriber.

.....  
[Name]

.....  
[Official position]

.....  
[Date]

.....  
[Address]

So far as possible it is advisable to obtain and preserve a record of professional services rendered to pupils by physicians. The back of the "Children's reference blank" may be used for this purpose.

It is to be particularly noted that pupils should be referred to the physician only at the designated hour and when accompanied by an official reference blank. To observe this rule carefully will insure regularity and save the physician unexpected calls.

The most frequent defect found among school children is that of their teeth. During the first year of the operation of the plan being presented, nearly 300 hours a week were designated by dentists for free service to deserving children. The dentist, like the physician, has not only manifested a keen interest in the plan but subscribed liberally to its practical enforcement. In some of the villages of the State every dentist is assisting in corrective and educational work. In one whole supervisory district every dentist is identified with the movement. It is steadily growing and should be very materially extended.

The oral hygiene committee of the State Dental Society has been of great assistance in this special phase of school inspection. Some of the members of this committee at their personal expense gave practical and highly instructive lectures on oral hygiene in several

of the normal schools of the State. This work should be continued and extended. The children's dental hour card to which reference has been made is similar to the service hour card reproduced above.

In utilizing the services of the dentists in this plan it is also mandatory on the part of school authorities not to abuse the privilege. The utmost care must be exercised in selecting children for the service, and they should be sent only when requested and accompanied with a dental reference blank properly executed.

In thirty-four cities of the State, hospitals have designated special rates for service to deserving children. In most instances the rate given is the same charged for town cases. The response to our request for this service has been so generous as fully to justify the belief that, with few exceptions, hospitals are not only willing but anxious to assist in this systematic plan for relief to deserving children. As rapidly as time will permit, many other hospitals should be interested to the end that every city will be identified with the movement.

This plan to afford children the opportunity to receive surgical treatment in hospitals furnishes an extra safeguard and should be generally encouraged. Before taking a child to either a hospital or dispensary for treatment it is advisable to secure the written consent of the parent or guardian. The following forms may be found useful in meeting the requirement of this service:

**CONSENT OF PARENT OR GUARDIAN**

To the Medical Inspector, or Superintendent, or Nurse:

.....N. Y.,.....191

I hereby authorize you to take my child.....  
to the {dispensary<sup>1</sup>  
{hospital to have h.... physical defects properly  
{treated,<sup>1</sup> either by surgery, medicine, or otherwise, as may  
{examined,  
be found best or necessary by those in attendance.

In presence of .....  
..... [Parent or Guardian]

.....  
[Address] ..... [Residence]

Such expense as may be incurred by this service must be agreed upon, and provided for, in advance.

<sup>1</sup> Cancel words not applying.

**MEDICAL INSPECTION**

**CHILDREN'S HOSPITAL SERVICE**

.....  
Name of hospital Address

To assist in extending relief to deserving children in territory accessible to the above hospital, the authorities thereof have established the following rates:

- In ward.....per day
- In private room.....per day
- Operating room, including anesthesia.....

.....  
Superintendent

.....  
Date

The above rates are revocable at the pleasure of the hospital authorities.



In brief, we may summarize the purposes of school medical inspection as covered in the above report as follows: (1) to discover physical and mental defects of school children; (2) to utilize such agencies as may be possible to follow up the defects found in order to secure their correction and prevent their recurrence; (3) to examine teachers as to their physical fitness and to teach them to conserve their health and protect the health of the children that they may be leaders in health education; (4) to examine janitors as to their physical fitness, to insure clean and sanitary school buildings and grounds; (5) to assist health authorities in the prompt recognition and suppression of any communicable disease in the school district; (6) to inspect school buildings, water supplies, toilet facilities, heating, lighting, or any other conditions which might injure the health of teacher or pupil; (7) to teach parents the real meaning of school medical inspection and to enlist their cordial cooperation in its practical application; (8) to teach children the value of good health; how to acquire and maintain it; how to prevent many of the defects of childhood and how to grow strong bodies and vigorous minds; (9) to correlate the various agencies in an educational campaign of health.

The plan which has been suggested for the enforcement of the medical inspection law has been treated somewhat at length, suggesting the following definite steps: appoint the most competent physician to be found for school medical inspection, and let the compensation be commensurate with the service rendered. Prescribe definite duties for him and require regular reports as to the manner in which such duties are performed. Execute a formal contract between school authorities and the school medical inspector. Employ a school nurse. Use standard forms for health certificates. Require health certificates for teachers and janitors. As the work develops inaugurate a systematic plan for following up individual cases. For detailed direction as to the children's service hour, the children's dental hour, the children's hospital service, and for suggested forms in following the detail of the work, communicate with the State Medical Inspector of Schools.

## THE COMPULSORY EDUCATION LAW

Mr James D. Sullivan, chief of the Attendance Division, has prepared a very clear statement of the result of the year in enforcing attendance and the causes of truancy. Such statement follows:

Under the statute, a child is truant from lawful instruction when absent from school without the knowledge and consent of his parent. This is not, however, in accordance with the understanding of the average person. All children absent from school or kept out of school by a parent in violation of the compulsory education law are regarded as truants by people generally and often so regarded even by school authorities, attendance officers and teachers. A boy kept out of school by his parent, however, in violation of the law is not at fault; his parent or guardian, and not the child, is a violator of the law.

Of the total number of children absent from lawful instruction, only a small number may be justly regarded as truants. In truth, if all parents were held strictly accountable for the lawful instruction of their children, there would be little truancy. The law should therefore be made almost invariably to run against the parent and seldom against the child. In Germany both truancy and illiteracy have been reduced almost to the vanishing point, as the compulsory education law of that country is executed properly and severely against the parent. If we are to eliminate truancy in this country, we must execute the law against the parent, by holding him more and more responsible for the support, control and education of his child.

It should not be assumed, however, that there are no truant children. The truant is in evidence in every community of considerable population, but not to the extent popularly regarded. The truant boy is entitled to much sympathy and consideration; yes, vastly more than he receives, since he is seldom personally altogether to blame for his delinquency, and at times the parent is not altogether at fault. The truant is a boy who is generally misunderstood and therefore misjudged and often ill-treated, if not actually abused. When in school, if he fails (and he usually does) to keep pace with his fellows in his daily tasks, he is scolded by his teacher and heckled by his classmates. Many a boy leaves school because the school and its work are not attractive to him. Book work as presented by his teacher is often dry and meaningless to this peculiar boy. In fact, so burdensome and unattractive is this sort of experience to the child that he would rather be almost anywhere else

than in school. In truth, even the blind alley and its youthful gangsters are more to his liking than the schoolhouse and its teacher. If the teacher lacks tact, personality and moral force, she fails to attract and hold this sort of boy to his work.

On the other hand, a school properly equipped, in charge of a forceful, competent teacher of large maternal instinct, can do more in the way of keeping such a boy in school and right-minded toward the school than the combined influence of attendance officers, school authorities and the law. In the last analysis, when the school and teacher fail to attract and interest this kind of boy, and he is kept in school only by the heavy hand of the law, he should be at once transferred to another school and teacher, since it has been often observed that, when transferred, he thrives in his new environment.

Nearly all truant children come from homes not strictly economic; that is, the father fails to provide for the family, or the mother fails to do her part properly in making and keeping the home. Often the mother is compelled to work for others to support herself and children, by grinding out a pittance at the nearby factory or the neighbor's washtub, while the boy is left to run the streets. The so-called truant often comes from a home where the father works but spends his daily wage at the corner saloon.

Pinch of poverty in the home — lack of adequate food and raiment resulting from one cause and another — is a tremendous factor in the causes of delinquency and truancy. No child will get an education when forced into school with an empty stomach and tattered garments. In this wretched condition, he avoids school by every means in his power, and he escapes from it through the first open door. Public charity as at times administered with red tape, evasiveness and a begrudging hand, has not done its full duty to meet the physical wants of the poor child amenable to the attendance law, and such a law can never be properly and humanely executed till the child is at least adequately fed and clothed.

The inherent right of the child of poverty to his chance for at least an elementary education, in a democracy, amply justified the enactment of a compulsory education law, and the very existence of such a law upon our statute books supports the proposition that every such child — even the poorest — has a right to be fed and clothed before the State lays upon him the heavy hand of this law.

New York is the wealthiest state in the Union. Her wealth far exceeds twenty-five billion dollars — ten billion more than Illinois or Pennsylvania, states next in the column of wealth. Who, there-



fore, has the hardihood to say that amid such vast wealth there should be left a single child within the borders of the State deprived of his chance for schooling on account of the poverty of his parent? The State is generous in providing educational opportunity, yet it has often signally failed through its local channels of public charity to make it possible humanely and properly to execute the compulsory education law in connection with the child of poverty. *Poverty*, we repeat, is a most potent cause of delinquency and truancy.

Then, too, we often find that the records of the divorce courts disclose the cause of truancy on the part of the child. Uniform and stringent divorce laws throughout the country would work as a check against truancy.

When a boy refuses and fails to attend school, there is something radically wrong with the child, the school or the child's home environment. In the first instance, the truant boy should be examined by an expert physiologist and psychologist, to determine whether the cause of truancy rests with the child or elsewhere. Such examination, when made, often discloses that the child is physically defective. If so, measures should be taken to remedy such physical defect. Dr Isidore H. Goldberger, assistant director of the bureau of educational hygiene of the city of New York, based on an examination of 80 so-called truants living in the great East Side of that city, found that 73 were physically defective one way or another. The doctor submits his findings in the following statement: "Of 80 children examined, 73 had bad teeth, 17 defective vision, 21 defective nutrition, 20 trouble with their feet, 60 were tobacco users, 19 alcohol drinkers, 8 did not breathe right, 8 had enlarged tonsils which resulted in difficult breathing, and 5 had heart ailment." This expert physician found at the Parental School at Flushing, Long Island, that truant boys on admission to the institution almost uniformly showed an abnormal blood pressure, and he found further that this pressure was usually reduced to normal after two or three months' stay at the institution. The conclusion is therefore inevitable that truancy on the part of children is due in no small degree to physical defects. The attempt to cure the boy of his truancy without first inaugurating measures to remedy his physical defects is therefore futile. A careful medical examination by medical experts in the public schools of the State has disclosed the fact that 49 per cent of the children (and among the children of the poor, a higher per cent) have bad teeth. Bad teeth produce bad digestion and bad digestion opens the way for

bad conduct in school and irregular attendance. To put the truant boy in a normal physical condition is to lay the axe at the root of the evil of truancy. Medical inspection and examination of school children, and the proper application of remedial scientific methods intended to remedy physical defects in children, will go a long way to correct truancy and many of its attendant evils.

The average truant boy in our educational and social systems, unregenerated, is an all-round misfit. He is out of harmony with the school spirit and the proper spirit of the community. He does not get on well with his teacher and the teacher does not get on well with the boy. He is usually an unloved youngster, yet he is entitled to sympathy and his chance in the world. He has never had a square deal; otherwise he would not be a truant.

The operations of the law during the school year covered by this report are indicated in part by data of the following table, and a comparison of the data with that of the preceding year is suggestive.

## 1913-14

	Persons in parental relation to children			Truants arrested by attendance officer	Committed to truant schools	Visits to school by attendance officer	Cases investigated by attendance officer
	Arrested	Fined	Imprisoned				
Towns.....	896	291	15	1 131	120	23 143	.....
Cities.....	2 081	221	7	5 796	714	.....	238 447
Total.....	2 977	512	22	6 927	834	23 143	238 447

## 1914-15

Towns.....	810	231	13	780	121	.....	.....
Cities.....	2 544	216	4	16 933	1 044	.....	293 762
Total.....	3 354	447	17	17 713	1 165	.....	293 762

During the year, 3354 persons were arrested for violation of the law, as compared with 2977 the preceding year, an increase of 377. These figures are not to be interpreted as indicating that the number of persons violating the law is increasing; the opposite is the fact. School officers, however, have been more active in the arrest of violators — 13 per cent more active, and this is right. Of the number arrested in 1914-15, 14 per cent were convicted, as compared with 18 per cent in 1913-14. This is not so encouraging, since we firmly believe that violators of the laws should not only be arrested but *convicted and punished*.

In the year 1914-15, 17,713 so-called truants were arrested, an increase of 10,786 over the previous year. The number of truant

children, however, is not increasing. Certainly not. The great majority of children arrested in both periods under consideration were not "truants," though absent unlawfully from school. In most cases the parent should have been punished and not the child.

The per cent of attendance to enrolment in 1914-15 was 81.6 of a possible 100, as compared with 80.5 in 1913-14. The increase of 1.1 per cent in a single year is a very substantial advance, though to the casual reader the increase may not represent enough to talk about. The 1.1 per cent increase represents 2,652,106 school days or, in other words, it represents 14,733 pupils, each attending a full school year. With due allowance for absence from school on account of inclement weather, impassable roads, illness of children, etc., the foregoing figures are extremely encouraging.

For failure to enforce the provisions of the compulsory education and child labor laws, public school moneys were withheld from the following named districts during the school year 1914-15:

<i>County</i>	<i>No. of district</i>	<i>Township</i>
Columbia . . . . .	10	Ancram
Dutchess . . . . .	6	Rhinebeck
Erie . . . . .	8	Wales
Oneida . . . . .	4	Steuben
Rensselaer . . . . .	6	Brunswick
Ulster . . . . .	9	Saugerties
Westchester . . . . .	3	Somers



## VACCINATION OF SCHOOL CHILDREN

During the year smallpox became epidemic in certain parts of the State. The state health authorities required a rigid enforcement of the public health law relating to the vaccination of school children. The law provided that children not vaccinated should not be admitted to the schools, and the compulsory attendance law required all children within certain ages to attend upon instruction. If parents did not wish to send their children to the public schools, it was incumbent upon them to provide, at home or in private schools, instruction which was the equivalent of that given in the public schools.

The Court of Appeals held that the two laws were not incompatible, and that a parent had his choice either to have his child vaccinated or to provide for such child at home or at a private school instruction which the State exacted. However, the enforcement of the vaccination law led to much friction and embarrassment in the administration of the schools in several cities and school districts of the State. The State Department of Health and the State Department of Education cooperated with each other in the proper enforcement of this law to the end that the health of the citizens of the State might be protected. There was a feeling, however, on the part of State Commissioner Biggs of the Health Department and of President Finley of the University that the provisions of the statute were too drastic in some particulars. Much public interest was manifested in the subject, and several measures relating to the vaccination law were introduced in the Legislature. Representatives of the Health Department and the Education Department appeared before the legislative committee on public health and recommended certain amendments to the vaccination law. These amendments were reported by the committee, passed by the Legislature, and approved by the Governor. The law thus amended still requires children in cities of the first and second classes to be vaccinated before being admitted to school. It was the belief of the health authorities that in large cities this requirement was essential to the proper protection of the health of the people. There was no material change, therefore, in the provisions of this statute in relation to cities of the first and second class.

The mandatory provisions of the law requiring all children in rural districts, in villages, and in cities of the third class to be vaccinated before admittance to school was modified. This law, as

applying to such parts of the State, was amended by providing that when smallpox exists in a city of the third class, or in a school district, or in the vicinity of such city or district, and the Commissioner of Health certifies that fact in writing to the school authorities, it then becomes the duty of the school authorities to require all children attending schools to be vaccinated. Any child who does not furnish the school authorities with a doctor's certificate stating that he has vaccinated the child, or that the child shows evidence by scar that he has been vaccinated, must be excluded from the schools. A parent may have his own child vaccinated, but if such child is not vaccinated it is the duty of the local board of health of the town or village in which the school district is located, or of the city, to provide for the vaccination of such children.

It is believed that this provision of the law properly safeguards the welfare of every community in the State, and at the same time removes the objectionable feature of mandatory vaccination when smallpox has not existed in a community for a long period of years.

New Salem Oct: the 23<sup>d</sup> 1786

For in consideration of John Foster his keeping School & teaching our Children one quarter of a year to begin Monday Oct: 2<sup>d</sup> 1786

We the undernamed subscribers do promise to pay or cause to be paid unto John Foster one Dollar for each Schooler we subscribe to send to be paid in good Marketable Wheat or Indian corn to be delivered at said Fosters house within fourteen days after the Quarter is up to be at the most common price such grain sells for in New-Salem at that time or in case of failure to be paid in hard money yoth currency without stay of judgment given under our hands this twenty third day of Oct: one thousand seven hundred & eighty six — 1786

Witness present

	Number of Schoolers
Joseph Nelson	2
John Cookshank	1
Tho: Armstrong	2
Genl McCleary	2
James Woods	1

Teacher's contract, 1786

Reproduced through the courtesy of Mrs Harriet McClellan of Salem, N. Y.



Records of School District No 2  
in the Town of Hartford

At a meeting of a majority of the taxable inhabitants  
of School district No 2 agreeable to previous notice at the school house  
in said district on Saturday the 7<sup>th</sup> day of August 1818 for the purpose  
of choosing three trustees one collector and a District clerk for the  
year ensuing

1<sup>st</sup> Appointed Lemmiah Comstock Moderator of this meeting

2<sup>nd</sup> resolved that Davis Hill be District clerk for the year ensuing

3<sup>rd</sup> resolved that - - - - - Lemuel Hardin  
Isiah Collet be our Trustees  
Abadiah Stage

4<sup>th</sup> resolved that - - - - - Geyar Dewey be our collector

5<sup>th</sup> resolved that the moderator and clerk signature passed  
of this meeting - - - - - Moderator

Davis Hill

At a Special meeting of the inhabitants of School district No 2 in the  
Town of Hartford held by order of the Justice at the School house in said  
District on Monday the 13<sup>th</sup> Day of December 1818

1<sup>st</sup> Appointed Lemmiah Comstock Moderator of said Meeting

2<sup>nd</sup> On motion resolved that the expense of the new school house  
 lately erected in this district be raised and defrayed by a tax  
 to be levied upon the inhabitants and raised agreeable to  
 the Law in that behalf enacted and provided

3<sup>rd</sup> resolved that the Annual District Meeting be held on the second  
 <sup>April</sup> Monday in each year

First leaf of an old record book of district 2, Hartford, Washington county

## NOTABLE RECORDS OF TEACHERS AND SUPERINTENDENTS

During the year several teachers and superintendents have completed terms of service which have entitled them to public recognition. In some instances the public has honored these teachers and superintendents. Probably there are many others who have also completed notable terms of service who have not been given public recognition. In the hope that the public may be stimulated to give appropriate recognition to those whose long service in teaching the children of a community entitles them to special recognition, we mention in this report the following cases which were brought to our attention:

**Patrick H. McQuade, Albany**

Patrick H. McQuade, principal of School 21, Albany, completed on May 12, 1915, fifty years of service as teacher and principal in the Albany public schools. Mr McQuade is a native of Albany, having been born in the city on August 29, 1844. He attended the district school number 7, then located at 56 Canal street. The city then had nine district schools, each with a man principal and two women assistants.

Mr McQuade in reminiscing last June, describes the attendance in Albany in his school days as 2500, with probably as many more in the private schools of the city. He speaks in an interesting manner of the buildings: "The buildings were of uniform pattern, brick structures, with two stories and an attic, looking like dwelling houses, which, in part, they were, for each served as living apartments for the principal. On the main floor the principal taught all the older pupils, the second story was devoted to the intermediate grades and the primary pupils were consigned to the attic. My first day in school was spent in the attic of school number 7—a dark, unattractive place, lighted only by openings in the roof, and showing exposed rough rafters, sloping each way. There were no blackboards and no desks. The pupils were seated on benches without backs. A printed alphabet card served as a substitute for the much more durable horn-book which had been the equipment of an earlier generation. The hours were from nine to twelve in the morning and from one to four in the afternoon, with a short recess during each session. The summer vacation was during the month of August.

“The principal’s salary was \$650 a year. The assistants received \$250, beginning sometimes at \$100. The teachers frequently had charge of as many as 100 pupils each.

“Albany in 1850 had 50,000 inhabitants. The amount expended for public schools was about \$13,000, including \$1000 from state funds. Rate bills had just been abandoned because the rates had been found exceedingly difficult to collect. •

“The principal of school 7 was then William L. Martin, a graduate of Trinity College, Dublin, and a most excellent scholar, proficient in the classics, in English, in mathematics, and moreover a trained elocutionist, a pupil of James Sheridan Knowles. The assistants, Miss Jane Coley and Miss Eunice Tallmadge, taught not only the English branches but gave the girls instruction in sewing, knitting, embroidering and drawing.”

Principal McQuade remained until he was 11 years old in the school described above. He won one of the ten competitive scholarships at the Albany Academy, awarded by the city. He was graduated from the Albany Academy in 1862, and on May 12, 1865, was appointed principal of School 1, Albany, as a result of a competitive examination.

In September 1877 he was transferred to School 13, known as the “Arsenal School” from the fact that the building had formerly been a state arsenal. Here his duties were mainly supervisory. He had twelve assistant teachers and the school numbered 600 pupils. In September 1886 he was transferred to School 21, where he is in charge of nearly 1000 pupils and has 21 assistants. In 1900 he organized the evening high school with less than 100 pupils. In the eleven years of his incumbency the number of pupils has increased to 900.

On the afternoon of May 11th, the teachers and pupils of the school with which he had been so long connected held an assembly to commemorate the event, and on the same evening the teachers who had been his associates entertained him and his faculty.

On four different occasions the former pupils and friends of Mr McQuade united in honoring his long and conspicuous period of public service in the schools of Albany.

The greetings and felicitations of the city were given to Mr McQuade at a dinner at the University Club of Albany on May 12th, which was attended by many of the leading citizens of the city. After the dinner Eli E. Packer of Albany was the toastmaster and among those who responded to toasts were John H. Finley, Com-





James A. Estee



Patrick H. McQuade

missioner of Education; Joseph W. Stevens, mayor of the City; Jacob H. Herzog, president of the board of education; William J. Armstrong and John J. McCall, members of the board of education, and Dr C. Edward Jones, superintendent of schools.

On May 21st a public reception took place in the Education Building. Dr Charles F. Wheelock, Assistant Commissioner for Secondary Education, presided. The musical part of the program was rendered by former pupils of School 21, under the direction of Prof. George Edgar Oliver of the Albany High School. Congratulatory addresses were made by Doctor Wheelock and Mr Robert W. Fivey, a former pupil of Mr McQuade. Thousands of men and women who had been pupils of Professor McQuade showed their appreciation of his service and their affection for him by attending this reception.

#### **Miss F. A. Reichenbach, Rochester**

Miss F. A. Reichenbach of Rochester has been connected with the public schools of her city for more than forty years. She has been principal of the Seward School for twenty-eight years, and during the period of her service has given instruction in every grade, it is said. During the forty years of her service she was absent only one day, a very remarkable record.

Miss Reichenbach went to the Seward School at Rochester, at the time of her appointment as principal, when it was situated on the outskirts of the city and in what might be termed an undesirable district, but one whose physical topography made it well situated for the site of a school building. She has witnessed the district outgrow itself and necessitate the erection of three new buildings to care for the needs of the district originally entrusted to the Seward School. The present school building of the Seward School was erected in 1900. The school grounds, through the interest and effort of Miss Reichenbach and her associates, are considered among the finest in the city of Rochester. The interior of the building is well equipped and artistically furnished, and contains a rare art collection.

Upon Miss Reichenbach's request, and to the regret of the board of education of the city, as well as the superintendent and supervisory staff, her resignation was accepted, and universal testimony was given by her associates of the high value of her service to the community as a teacher.



Miss F. A. Reichenbach



### **Superintendent James Agar Estee, Gloversville**

James Agar Estee completed the service of a quarter of a century as superintendent of schools of the city of Gloversville on July 31st. He was reelected to his twenty-sixth year by the board of education at its meeting in June.

During Superintendent Estee's term of office the school system of his city has grown in extent and scope commensurate with the growth of the city itself. When he first took office the school system consisted of three buildings, with 39 teachers, whereas at present the equipment consists of 103 teachers and ten buildings. The public schools of the city of Gloversville can fairly be said to be monuments to the work and ability of Mr Estee.

Superintendent Estee was born at Petersburg, N. Y., May 27, 1849, the son of Rev. Azor Estee and Susan (Maxson) Estee. He was graduated in 1873 from Alfred University with the degree of B. A. and later he received the degree of M. A. from the same institution. In 1874 he was elected principal of schools at Ashaway, R. I., and later he became principal of the high school and headmaster of the Byfield School at Bristol, R. I. In 1884 he was elected principal of the public schools at Addison, N. Y., and in 1890 was elected to his present position. In 1874 he married Mattie J. Davis and has one son, Orville D. Estee.

### **Superintendent Charles E. Gorton, Yonkers**

Dr Charles E. Gorton of Yonkers is in point of service the oldest superintendent of schools in the State. He has probably served a longer continuous period in one city than any other city superintendent in the United States. This service entitles him to special recognition. He is not only noted for the excellence of his work at Yonkers, where he has been engaged in educational work for forty-one years, and where he has served as superintendent of schools for thirty-two years, but he has been prominent in the educational work of the State, and is well known throughout the country as a successful educator.

During the struggle for the enactment of an effective compulsory attendance law, which was carried on for several years by the State Superintendents Council, he was a member of the special committee of the council which was appointed to secure suitable legislation. There were differences of opinion among the members of the committee at various times which occasionally almost led to bitterness, but Superintendent Gorton never lost his balance and it is to him more than to any other one person that the final success of the movement is due.

As in the committee so in the general meetings of the council, Superintendent Gorton was always sane, well balanced and courteous. He quickly saw the strength and the weakness of the various propositions submitted for action. He was always very helpful to less experienced men.

Doctor Gorton has been called the father of the Yonkers school system, and not unjustly so, and yet the great success of the Yonkers schools has not been due so much to any system as to the native ability and saving common sense of Superintendent Gorton. He seemed to recognize a good teacher almost intuitively. When he had vacancies to fill he agreed to pay whatever was necessary in order to obtain the right kind of teachers, and his board of education invariably sustained him in this. In a word, he was and is superintendent of schools, not merely a clerk of the board of education. In his selection of teachers he made the places round about him serve as training schools for teachers for him, as Yonkers in turn bore a similar relation to New York City.

Superintendent Gorton is progressive but not radical. It might be said of him that he was not

The first by whom the new are tried  
Nor yet the last to lay the old aside.

He is slow to venture upon new and untried experiments but quick to see the value in new movements. He is practical and progressive, but not visionary. There may be found in the Yonkers schools all the forward steps in educational work that have proved their worth.

The success of Doctor Gorton has been no accident. He was well educated and well trained. He was born at North Brookfield in Madison county. He was fitted for college in the schools of our State, was graduated from Michigan University, studied law and was admitted to the bar. After a short practice of his profession he gave his attention to educational work. He taught in the academy at Yonkers, then became vice principal of School 2 and after six years in this position he became the principal of the school. After holding this position for one year he became principal of the high school for a year, and in 1884 was made superintendent of schools of the city, succeeding Andrew J. Rickoff in that office; so it is seen that Doctor Gorton had the training and the experience necessary for successful work.

The Yonkers school system has so grown under the management of Doctor Gorton that there is now one high school, one trade school, one open-air school, one training school for teachers and twenty-two

grade schools. In these schools there are over 16,000 pupils and more than 500 teachers are employed. Doctor Gorton is more than a teacher, more than a superintendent of schools. He has been a member of the State Examinations Board from its organization. He is a member of the Draper Memorial Committee. Locally, he is president of the People's Saving Bank, and a member of the board of directors of the Westchester Trust Company, of St John's Hospital and the Yonkers Public Library. He has escaped the narrowing influences that are the heritage of one who is confined to a single line of work, and, on account of this, as well as because of his educational and school training, Doctor Gorton ranks among the best of city superintendents, and is loved and respected by all who know him.

### Superintendent Rovillus Rawling Rogers, Jamestown

Faithful, efficient and effective public service ought to be fittingly recognized. This was done when, upon the completion of twenty-five years of service as superintendent of the city schools, Superintendent Rovillus R. Rogers was tendered a banquet by the teachers and the members of the board of education at Jamestown, followed by a public reception at which the citizens of Jamestown vied with one another to do him honor, and on which occasion congratulatory letters were read from President Finley, Deputy Commissioner Finegan and many others. It is of interest to know what manner of man it was that called forth such an unusual demonstration.

Mr Rogers was born at Marathon, Cortland county; of an English father and a Huguenot mother, a stock that has produced many desirable men and women in our country. He started life well, but suffered the almost insuperable loss of his mother while still an infant. After his mother's death he made his home with Mr and Mrs G. H. Glazen, for fifteen years, living on a farm in Broome county, and having the farm experience with its lessons of industry and thrift that have laid the foundations of success for so many others. At the age of fifteen years Mr Rogers removed to Ohio with his foster parents. He remained in Ohio four years, and during this period had his first experience as a teacher, serving in the township of Monroe, Ashtabula county. His schooling had been obtained in an ordinary village school in the State of New York supplemented by two terms in what was called a "select" school. While in Ohio he attended the Kingsville Academy four terms, while preparing for college. The remainder of his preparatory work was done in what is now Oberlin Academy. He worked his way through college, com-



pleting the four-year course in three years. Upon his graduation from college Mr Rogers became the principal of Ellington Academy, Chautauqua county. Later he became principal of the Gowanda Union School, and in 1881 he became the principal of what is now the Jamestown High School. In 1890 he became the superintendent of schools at Jamestown, succeeding Samuel G. Love, who had made a considerable reputation for the schools at Jamestown through the introduction of a system of industrial education. This work Mr Rogers has systematized, extended and improved. He is widely and favorably known by other superintendents, and his judgment is respected by all who know him. If it be true that "By their fruits ye shall know them," then Mr Rogers deservedly ranks high among the educational workers of the State.

## SCHOOL LIBRARIES AND READING

There is no subject in the curriculum of the public school of more importance than the subject of reading. This subject and the relation which a school library bears to it are treated so soundly and comprehensively in an article by Dr Sherman Williams, Chief of the School Libraries Division, that the article is given in this report. It is commended to superintendents and teachers, and those who adopt in their work the suggestions which it contains will render a lasting service to those under their instruction. The article is as follows:

The character of our lives is determined chiefly by our ideals and our ideals are determined by our personal associations and our reading. Our best and highest ideals are likely to be the outcome of our reading if the reading is of the right kind. We are not wholly free to choose our associates but we are absolutely free to make our reading what we will. Through our reading we may, if we choose, be intimately associated with the wisest, the purest, and altogether the greatest characters who have adorned humanity in all the ages.

One who accepts these statements must of necessity regard reading as the most important and the most practical subject taught in school, and also recognize the fact that when one is taught how to read but not what to read, the work is only just begun. He must also recognize the fact that a person is not necessarily better off for knowing how to read. He may be much worse off, and society may be the worse because of it. That depends upon the kind of reading done. Reading is a means to an end, not an end in itself. The end is to read the thoughts of great and wise men and to be influenced thereby.

Children should be trained to like to read that which is worth while. They can no more be trusted to acquire this taste by themselves than they can be trusted to acquire, unaided, any other taste or habit that is worth while. A few will do it but the great majority will not. It is chiefly as an aid to the formation of the habit of reading that which is worth while that school libraries are maintained. To the great majority of children this work would be impossible but for school libraries. We are therefore interested in making sure that school libraries have a sufficient number of books, and books adapted to the work in hand.

We need next to see that the habit of reading good books is formed. This calls for teachers as carefully trained for this work

as for teaching arithmetic, grammar, geography or other subjects commonly taught in school. It is more important than any of these, or all of them put together, and should receive serious attention.

An attempt has been made to learn to what extent the school libraries have been used. Reports have been asked for from district, village and city superintendents. A few of these have failed to report, others have estimated the reading as no accurate records were kept, but most of the city and village superintendents, and some of the district superintendents, have been able to give exact figures. It is believed that the general result is sufficiently accurate to enable us to know rather accurately to what extent the school libraries are being used.

Six district superintendents have made no report whatever and 21 reported no statistics. Three village superintendents made no report and 7 others had no library records and could therefore give no information. Only two cities failed to report and in each case the failure was due to the death of the superintendent of schools. Five superintendents reported that no records of circulation were kept. The district superintendents who were able to give any information reported a circulation of 576,332 volumes; the village superintendents reported 137,758 volumes; the city superintendents reported 13,223,379 volumes; making the total circulation from the schools of the State 13,937,469 volumes. If the circulation that has not been reported on account of a lack of records were added, it would bring the total circulation well up toward 15,000,000, or about ten books for each pupil in the public schools.

It is evident that there is no difficulty in getting pupils to do enough reading. An attempt has been made to increase and improve the character of the reading done in the rural schools through having certificates, signed by the teacher and the district superintendent, given to those pupils who read five volumes from the school library. During the past school year 37,703 pupils obtained such certificates. The number will be greatly increased next year.

The reading done in school is likely to be for one or all of the following purposes: (1) for pleasure; (2) to supplement school studies; (3) to establish the reading habit and direct it into proper channels. These purposes are named in the inverse order of their importance and the direct order of ease of accomplishment. The pupils will accomplish the first if left to themselves, provided they have access to attractive books, but they would accomplish the same purpose through doing better reading if they were aided somewhat in the matter. The second purpose, as a rule, will be accomplished



only through the direct oversight of the teacher. This can be made a very important function of the school library, though it is far from being the most important one. The third purpose is the great function of the library. It is this that leads to the formation of life-long reading habits on the part of the children. It is here that the lack of teachers trained for such work is most keenly felt.

District superintendents report a greatly increased interest in the school libraries since the plan of giving certificates for reading went into effect. This work has been carried on under the general direction of a committee of the district superintendents, to whom much credit is due. They are now considering a supplementary plan which, it is hoped, may improve the character of the work done. In brief it is this: 200 volumes of standard literature are to be selected, which will include the best juvenile fiction, biography, history, poetry and other classes of literature. On the completion of the elementary course of six years, a diploma is to be given to each pupil who has read fifty of the books named, each class of literature being represented in due proportion. This plan will be certain to improve the general average of the reading done. The degree of success in this matter will depend upon the skill, energy, tact and patience of the teachers and the district superintendents. Many of the latter have been very enthusiastic and efficient, while a few have been wholly indifferent.

The greatest obstacle to success in the proper use of school libraries is found in the fact that many of our teachers have themselves never been trained to care for good literature. Their reading is largely confined to newspapers, the poorer class of magazines, and mediocre fiction. Such teachers do not know how to make use of the school library to the best advantage, and it is not their fault. They have not been trained for such work. The normal schools, training schools and training classes might render a very valuable service in training their pupils for this work. It would be one of the most helpful services they could render.

It is perhaps assumed by the various schools that are engaged in the work of training teachers, that their students received such instruction and training in their high schools, but for many years the study of literature in our secondary schools was mainly a study of the history of literature and the biography of authors, rather than a study of the literature itself, and what literature was read, was read for the purpose of criticism and analysis, rather than holding a delightful communion with an author and his creations. This practice has not wholly died out and it can not safely be assumed

that the students who are preparing to teach, have before entering upon their professional study become familiar with the literature that their prospective pupils should read. Those in charge of normal schools, training schools and classes, feel, and justly so, that there is much to be done and but little time in which to do it, but they should not lose sight of the fact that the ability to read understandingly, and the desire to read good books, is of transcendent importance. Leonard P. Ayrs in a recent report upon the Cleveland schools says: "Reading is the most important thing that the child can learn in school. It is the key that opens most of the doors through which the adult will wish to pass. The ability to translate the printed words into ideas, thoughts, motives and actions which make for knowledge and efficiency is the greatest asset anyone gets from school. It is this ability to gain ideas from the printed page that makes it possible to secure a knowledge of any subject which one may desire to take up in later life. Through it one may gain access to the best that has been dreamed and thought and done."

The greatest hindrance to progress in any phase of life's work is the inertia of things that so strongly resists changes. If we are soon to become in accord with the modern conceptions of the practical value of the use of school libraries we must put forth great efforts to overcome the inertia that hinders here as elsewhere. We must have the help that can be given only by the schools whose special work is to train teachers. Having once secured teachers properly trained for the work of teaching reading and literature, the responsibility will rest with the public schools. Much progress has been made in the last few years in the work of creating in the pupils a love of good reading. The outlook is hopeful, and the time for renewed effort is opportune.

It must have been noted by thoughtful teachers of experience that pupils who come from homes where there are many books are likely to be far in advance, in the matter of literary taste and development, of other pupils of equal or superior native ability who have not such homes. Why is it? Were pupils from reading homes given a narrow course in reading, held to the reading of a few books and examined on them? Quite the reverse. They were allowed to read what they would, when they would, and how they would, and were never formally examined, though without doubt their parents must have talked with them informally more or less about the books they read. Why can not we learn a lesson from this? A formal examination in literature is the best possible way to make a child dislike

literature. It has been very effective for a long series of years. Is it not time to try something else? Let them read and read—read extensively and about what they will—guiding them by suggestion rather than direction. This will be far more effective. Our high school libraries are largely made up of books that are intended for adults and it is not possible to interest young people in them. In this connection let me quote from Miss Margaret Ashmun:

It is safe to say that two-thirds of the poor teaching in high school English classics is due to the failure of the teachers to realize that high school pupils are boys and girls, not men and women. The first or second year high school students are children with the child's love of a story, of action, of the lively, vigorous, pulsating facts of life. Why should these young people be denied the wholesome thing which their natures demand? They are hungering for the bread of reality and we give them the cold stone of abstraction.

If we are to train our pupils so that they are to become reading and thinking men and women we must begin with the first year primary and continue the work through the high schools. The various schools for the training of teachers must do their share in the way of fitting their students for the work.

It should be said at the outset that some schools are doing most admirable work, especially some of our large city high schools, but the schools in general are not. The rural schools are making more progress in this work at the present time than is any other class of schools, though many of these have not yet awakened to the importance of forming proper reading habits. But the outlook is good. Aside from the need of teachers better trained for this work is the need of more library books suited for the pupils of the first four grades, and a good supply of suitable supplemental reading matter.

The elementary schools in the cities and villages are very unlike in their work. Some are doing exceedingly well, others practically nothing, in the way of training pupils to enjoy good reading. Many of the grade room libraries are a farce, being made up largely of a variety of textbooks on various subjects. Many have no books for supplementary reading.

A blank for a report regarding library conditions was sent to each district in the State in which secondary instruction was given in one or more classes, and 661 of these districts sent in reports. Of these, only 114 employ a regular librarian and most of the librarians are employed for part time only; only 46 of these schools have their libraries open during vacation; in 345 of the schools the accession books do not show when a book is lost or worn out, and therefore the accession books are of little account. I mention these facts to



show the general lack of interest and system. The blank forms for report call for much other information, and, when received, are turned over to the inspectors for verification when they visit the schools. They are also expected to discuss the matter of libraries and their use with principals and, if need be, with boards of education.

A trained librarian should be employed by each large school district, and in cases where there is a large high school as a part of the system, the librarian should give all her time to that work. This matter ought to be pressed home as it is exceedingly important.

There is very great need of a specially trained person to visit large school systems, ascertain what is being done with the school libraries, to offer advice and render service. This work can not be done very effectively through correspondence alone. Many boards of education have not a proper realization of the practical value of a school library, and some school principals are equally lacking in this respect. The foundation trouble in this matter is that there are no "counts" credited to reading, except in case of formal examinations in literature, and it is a difficult matter to make those helpful. If pupils might be given some credit for having read a given number of books of a proper character during their school course, this credit being given on the certificate of both teacher and principal without any formal examination on the reading done, vastly more would be accomplished in the way of creating a fondness for good reading than is done now.

Much money has been unwisely expended in the purchase of library books. There are very few books purchased that are not good in themselves, but many are not adapted to the particular school for which they are bought. This Division does not feel justified in saying that it will not approve a good book merely because it will be read by only a few pupils and is of no value to the great majority of the pupils. We have believed it desirable to leave to the community a large degree of freedom of choice, even though that freedom sometimes be exercised unwisely. It has been thought better to determine indirectly the choice through sending out annotated lists of books. One that suggests suitable books for elementary school libraries has been sent to every district in the State. For secondary schools we have already sent out one list on commercial subjects, another on English, two on history, and others are in preparation.

A change in ideals as to the purpose of the school library is much needed. The library is not a mere adjunct of a school — desirable,

as is a gymnasium or an auditorium. It is a vital part of the school equipment and its proper use is as important as any other factor in school work. The school library should have a very definite purpose. Its work can not be done by the public library. The latter may and ought to supplement the work of the school library but it can never be a satisfactory substitute for it. This ought to be too obvious to call for discussion. No other agency can be an effective substitute for a school library any more than there can be a satisfactory substitute for a good home.

Education ought to be, and is, a lifelong process. The education obtained at school forms only a small part of the education of a lifetime, though a very important part. Whether a pupil learns a little more or a little less of subject matter during his school life is not a matter of the greatest moment, but the direction given to one's life and thought during that period is of the greatest importance. Everything else being equal, of course the more of subject matter a child learns while at school the better, but there are more important things than mere knowledge. What we know does not necessarily bear much relation to what we do. Our feelings influence our actions to a much greater extent than does our knowledge. Our ideals determine our lives more than all else, and our ideals are largely determined by the atmosphere in which we live; therefore the creation of proper ideals during school life is of the utmost importance. The comparatively brief school life should prepare for the much longer period of after-school education. The child should leave school prepared to make the most of the opportunities for after-school education and, to some extent, to create opportunities. That work in school is most valuable which contributes most largely to the building of proper ideals, the development of right tastes, and the creation of right habits. The school library should be a large factor in this work.

Do our schools teach the use of books? How many pupils when entering a high school know how to use a dictionary to a good advantage? How many are able to do this even after completing a high school course? How many know how to ascertain quickly what a book contains? How many can use chapter and page headings, index and table of contents to advantage?

The reading done in many schools seems to be chiefly for the purpose of information; yet our ideals, which make our lives what they are, come chiefly through reading books that are inspirational rather than those that are informational.

The use of the school library should tend toward intelligent and independent work in the schoolroom. It should tend to arouse an interest in subjects outside of textbooks. It should tend to bring pupils in touch with the best writers on whatever subject they may at the time be interested in. It should tend to prevent the merely routine and deadening work of the school.

It has for a long time been a rule of the Board of Regents that there should be no allotment of money for the purchase of periodicals. This was no doubt a very wise rule at the time it was made, but conditions have changed and large and effective use of periodicals is now being made in many of the schools of our State, as well as in the schools in other states. It is well worth considering whether the use of such magazines as *St Nicholas* and the *Youth's Companion* in our elementary schools would not be an investment worthy of encouragement. The cost would be small, and there would be fresh matter each week. Many of our advanced schools are making use of the *Literary Digest* and the *Independent* with most satisfactory results. These periodicals, and such others as the *Atlantic*, *Harpers*, *The North American* and some elementary scientific journal would prove very helpful. It would be well, it seems, to consider the matter of duplication on proper periodicals, in view of present conditions.

The children all learn how to read while in school. They will all read when they go out into life. Many of them will spend much time in reading. What will the results be? What kind of reading will they do? Will it serve any other purpose than merely to occupy the time? Will it be helpful or harmful? Uplifting or degrading? Will it develop constructive or destructive ideas? Will it lead to higher or lower ideals of life? Will it increase or lessen their faith in humanity? Will it develop their altruism or their selfishness? Will it increase their patriotism or their greed? Will it lead them to sympathize with the unfortunate or create an indifference toward mankind as a whole? Will it broaden their lives or narrow them? These and similar questions that must arise in the minds of thoughtful men are to be considered, must be considered, by all earnest schoolmen. The solution of these questions rests more largely upon the proper use of the library and the reading tastes developed than upon anything else that the school can do.

Seventy-eight years ago the Legislature voted \$55,000 for the support of school district libraries, and has continued to vote that, or a larger sum, ever since. This amount was about  $2\frac{1}{2}$  cents per capita. The same per capita tax now for that purpose would yield



over \$230,000; in other words, the population is about four times as great now as it was in 1838. The wealth of the State now is more than forty-one times as great as it was in 1838, and if the same tax rate for school libraries was maintained now as was levied in 1838, it would give us \$2,255,000 every year. Of course, nothing like this sum is needed or could possibly be used to advantage, but with more than four times the population we had in 1838, we do need much more money for school libraries than was needed then, and with more than forty-one times the wealth we had in 1838, we can well afford the amount that is needed now.

Never before has there been so great an interest in school libraries. Never before has there been so large a use of them, or have they been used to so great an advantage. They have been the most effective of any single educational agency supported by the State. Never before has the money appropriated for the use of school libraries been so economically and so effectively used. These statements may not be true of every individual district in the State, but they are true of the State as a whole; of this there is no possible doubt.

The school has no function more important than that of training the children to enjoy good reading. In cities and in large villages there ought to be a school librarian who has general charge of library matters just as special teachers of drawing and other subjects have oversight of that work, but in such cases the direct work should be given to the teacher who is with the children all the time, knows them, and should best know how to influence them. The librarian of the public library can render valuable aid, but she is still farther removed from the children of the school than is the school librarian, and much less able to reach them directly. The public library is a very valuable supplement to the school library, but it can never be a satisfactory substitute for it. The number of books that should be referred to in school is large, and the book, the teacher, and the pupil should be as close to one another as possible.

We have only just begun to realize the possibilities of school libraries. What is now needed is not so much more reading as better reading and more effective training in the use of books. The public libraries are putting forth commendable efforts, and are doing most excellent work, but those that they can reach effectively are only a drop in the bucket; the great mass must be reached by the teachers through the use of the school libraries or not at all.

## SCHOOL BUILDINGS

The people of the State have invested in school buildings about \$160,000,000 and during the school year have invested about \$10,000,000 in the construction of new buildings. Great progress has been made in recent years in the architecture of school buildings and in all parts of the State many modern buildings, beautiful in design, have been erected. Many attractive buildings, well adapted to the uses for which they are designed, have been constructed in the rural regions and many beautiful buildings containing the most convenient and essential appointments for buildings devoted to school purposes have been erected in the villages and cities of the State. Pictures of some of the buildings most recently erected are included in this report. A description of such buildings is given showing the material used in construction, the cost of the building, the number of pupils which may be seated in the building, and the chief features of interest in such buildings. This information is made available in this report for the benefit of communities in the State which contemplate the erection of new buildings.

In this connection it may be well to point out that while much progress has been made in the improvement of school property, in both the rural and urban sections of the State, there are still in use for school purposes many rural school buildings and many city buildings which are wholly unfit for school purposes and which should be replaced by modern buildings. The attention of school authorities in such districts and cities is especially directed to the type of buildings which are shown herein.

It is stated by reliable authority that twelve schoolhouses and two colleges are burned every week in America. It is further stated that in the United States a fire occurs every day in some school. Many lives are lost annually and several hundreds of thousands of dollars are annually wasted in the destruction of school property. Many fires have occurred in school buildings in this State in recent years but fortunately without loss of life. The law is mandatory in relation to fire drills and is rigidly enforced. In the construction of buildings every precaution should be taken to make such buildings safe and to guarantee protection to the teachers and pupils who are compelled to remain in them. The same care at least should be exercised in the erection of school buildings to protect the children and teachers housed in them that is generally exercised in the construction of manufacturing plants to protect the workers therein.

## School Buildings Which Must Disappear



School buildings and outbuildings in one of the prosperous farming sections of the State. The assessed valuation of the district is \$78,000. The superintendent, who has accomplished much in the improvement of the school buildings under his supervision, has informed the inhabitants of the district that new buildings must be provided this year. The insufficiency of light, the total lack of ventilation and other unsanitary conditions are apparent. This type of school buildings throughout the State must give way to proper, modern buildings.





Two farms in the same district as the buildings shown on the preceding page



The entrance to a schoolhouse in a prosperous farming section. The assessed valuation of the district is \$99,698, and 19 children are enrolled in the school.



An interior view of the school building shown on the preceding page



The teacher and pupils





The assessed valuation of the district in which this school building is located is \$41,280



The assessed valuation of the district in which this school building is located is \$140,000



A "lonely shack" used for a schoolhouse. Assessed valuation of district  
\$38,846.



A school building in a district having an assessed valuation of nearly  
\$115,000



A building in a district having an assessed valuation of \$83,000



A building in a district having an assessed valuation of \$110,000





The old building in district 2, New Hartford, Oneida county .

Built nearly one hundred years ago and used until the opening of the new building in September 1914. The new building may be seen in the background.



District 2, New Hartford, Oneida county

Erected, 1914; cost, \$12,000; constructed of brick; two rooms; seating capacity, 80; heated by furnace; ventilated by gravity system

## Modern Rural School Buildings



District 9, Greece, Monroe county

Erected, 1914; cost, \$4352; seating capacity, 80; constructed of wood, with brick foundation; heated by furnace; ventilated by gravity system



Simple playground apparatus made by the pupils of district 2, Aurora, Erie county



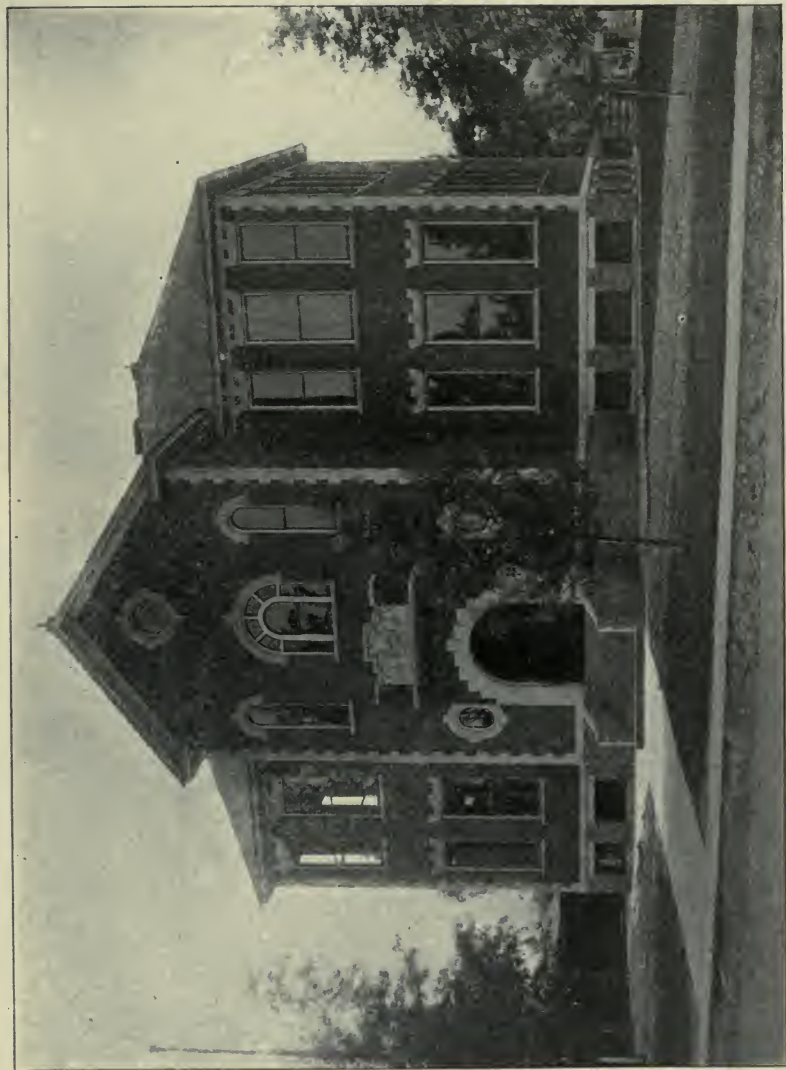
Model schoolroom on exhibit at the Otsego county fair, 1915

Believing that many of the imperfections in our one-room school buildings come as much from a lack of knowledge of schoolroom needs as from the disposition on the part of the patrons and trustees to economize, I fitted up a room for exhibit during the week of the county fair that the public might have an opportunity to see what is considered modern in schoolroom heating, lighting, decoration, furnishing and equipment. The many improvements that have already been made, from the removal of superfluous decorations by the teachers to the installation of heating and ventilating systems by trustees, bear testimony to the soundness of the conjecture. That the correct costs no more, and in many particulars much less, than the incorrect was emphasized. School was in session in this room on the 14th with Miss McGee of the Oneonta Normal School in charge.

JOHN B. McMANUS  
*District Superintendent*



## Village Elementary School Buildings



An elementary school building in district 7, Corinth, Saratoga county

Erected, 1908-9; cost, \$14,000; constructed of brick with stone trimmings; four rooms; seating capacity, 200; heated by furnace; ventilated by mechanical system



Public school building at Sherman, Chautauqua county

Erected, 1914-15; cost, \$40,000, including equipment; constructed of brick; an assembly room seats 500, a high school room 75, and six grade rooms 42 each; several laboratories and gymnasium; ventilated by a mechanical system



Public school building at Luzerne, Warren county

Erected, 1908-9; cost, \$19,377; constructed of brick with stone trimmings; contains eight rooms; grade rooms seat 264, academic department 66; heated by furnace; ventilated by mechanical system



The old building in district 1, Hornellsville, which was abandoned when the new building was erected. The basement was occupied by the children in the primary grades.



Public school building of district 1, Hornellsville, Steuben county

Includes the eight elementary grades and high school. Erected, 1911-12; cost, \$14,000; constructed of brick; contains five rooms; seats 229; heated by furnace; ventilated by mechanical system





Public school building of district 1, Angelica, Allegany county

Includes the eight elementary grades and the high school department. Erected, 1908-9; cost, \$20,300; constructed of brick with stone trimmings; contains eight rooms; seating capacity of grades, 210; of high school, 70; has auditorium seating about 400; heated by furnace; ventilated by mechanical system



Combined elementary and high school building, Chatham, Columbia county

Erected, 1915; cost, \$77,500; constructed of brick and concrete; heated by steam; ventilated by mechanical system; contains 24 rooms and auditorium

## City Elementary School Buildings



Public School 14, Albany

Erected, 1915; cost, \$250,000; constructed of brick with stone trimmings; contains 26 classrooms, auditorium, gymnasium, vocational rooms, and open-air school. The building is also used for community center work.





Fairmont School, Jamestown

Erected, 1912-13; cost, \$105,000; constructed of brick with limestone trimmings; contains 15 classrooms, assembly room and gymnasium; seating capacity, 600; used exclusively by the elementary grades



Sanford Street School, Glens Falls

Erected, 1914-15; fireproof; constructed of brick with concrete and limestone trimmings; contains 12 rooms, and separate gymnasiums for boys and girls; indirect steam heating system, mechanical ventilating system, and modern sanitary system

## Elementary School Buildings in New York City



Public School 179, Brooklyn

Cost, \$343,960; classrooms, 51; seating capacity, 2096; contains auditorium, gymnasium, open-air rooms, and roof playground



Public School 53, Bronx

Cost, \$359,940; classrooms, 51; seating capacity, 1931; contains auditorium, gymnasium and open-air room



Public School 170, Brooklyn

Cost, \$276,304; classrooms, 36; seating capacity, 1511; contains playrooms, auditorium, gymnasium, open-air room and roof playground



Public School 169, Brooklyn

Cost, \$277,833; classrooms, 36; seating capacity, 1468; contains playrooms, auditorium, gymnasium, open-air room and roof playground





Public School 95, Queens

Cost, \$196,944; classrooms, 20; seating capacity, 805; contains playrooms, auditorium and vocational rooms



Public School 172, Brooklyn

Cost, \$215,527; classrooms, 26; seating capacity, 1044; contains playrooms and auditorium



Public School 56, Bronx

Cost, \$149,470; classrooms, 16; seating capacity, 755; contains playrooms, workshop and auditorium

## UNIT SCHOOLHOUSES

A recent type of school construction which is receiving careful consideration in different sections of the country is the one known as the "unit schoolhouse." This type of building has one story and is called the "unit schoolhouse" because the classroom is made the unit of the building and there may be as many classrooms and as many separate rooms for special purposes as may be desired. It is claimed by those who are in favor of this type of building and by the school authorities of some communities in which such buildings have been in use that there are many advantages in favor of this plan over the usual plan of erecting two, three and four story school buildings. Following are some of the advantages claimed for this type of building:

1 The construction is cheaper and buildings may be made plain and substantial or as ornate as a community may desire.

2 The buildings are more sanitary as the pupils of one room are not required to mingle with the pupils from other rooms, except when they are brought together for general exercises. Children are therefore in less danger of contracting communicable diseases such as scarlet fever, diphtheria, cold, etc. because they do not generally associate with the children from the several rooms of the building.

3 Facilities are provided, without extra expense, for social center work.

4 There is also less chance of a fire occurring and if a fire does occur, it is more readily controlled, and there will be less loss of life and property. It also obviates the necessity for fire drill.

5 Discipline and supervision may be made more effective.

The city of Rochester, which has recently inaugurated many progressive features of modern school systems, has erected three buildings of this type. The Ellwager and Berry Public School of Rochester is a sixteen-room one-story building and contains, in addition to the classrooms, an auditorium, plunge and shower baths, buffet kitchen, teachers' rest room, library, office and domestic science room. The cost, without equipment, was \$95,000. The accompanying pictures illustrate the Rochester building.

Superintendent H. S. Weet of Rochester has made the following statement in reference to this building:

"Of the three one-story, or as they are called in Rochester "safety first," schools, only one, School 24, has been in operation a full year. This building is 121 feet wide by 274 feet, 8 inches, long,





Ellwager and Berry Public School, Rochester

Every room has an outside door and is lighted by skylight



Kindergarten room



Manual training room

Ellwager and Berry Public School, Rochester



Assembly room and gymnasium



Swimming pool and shower baths  
Ellwager and Berry Public School, Rochester



one story, wood rafters and roof boards, composition roof. The outside walls are hollow tile plastered inside and out between brick piers about 12 feet apart. These brick piers show on the outside of the building only, the inside being flush with hollow tile and plaster.

There are fourteen regular classrooms, one large kindergarten with separate toilets, wardrobe, storeroom and office, one domestic science room with storeroom, bed room and dining room, one manual training room with stock and finishing room, one plunge room with lockers, shows and toilet rooms, one teachers' rest room with kitchen, dining room and toilet rooms, one assembly hall with two dressing rooms off stage, one large library, one principal's office with waiting room, storeroom and toilet room.

"Each room used by the pupils has an outside door. The advantage of this was demonstrated yesterday when we had a fire drill at our No. 28 "safety first" school and 534 pupils left the building in 34 seconds after the fire alarm signal was given.

"The light comes from a saw-tooth roof skylight through the ceiling of obscure glass which diffuses and spreads a soft light over the entire room. The only excavations are for the boiler room and coal room and tank in plunge room. The area of the building used for school purposes, which does not include the boiler room, fan room, coal room, cold-air room or janitor's room, is 32,862 square feet. The cost of the building was as follows: construction, \$57,284.65; heating (including automatic temperature control), \$27,255.83; plumbing, \$8024.35; electrical work, \$2536; total, \$95,100.83.

"The cost of construction is about the same or perhaps a little less than a two-story building of the same floor area. We have not completed our figures on the cost of operating and maintaining for one year so that we can not give exact data, but we feel that the cost of heating will be slightly more than for a two or three story building of the same floor area.

	REGISTER	ATTENDANCE
Total cost No. 24.....	42.74	45.67
"    city .....	35.09	38.78
Operation No. 24 .....	9.15	9.78
"    city average .....	4.66	5.15
Maintenance No. 24.....	1.42	1.52
"    city average .....	1.20	1.42

## RETIREMENT OF TEACHERS

The board charged with the responsibility of the retirement of teachers and of supervising the retirement fund is composed of the following members: George P. Bristol, president, Ithaca; Charles H. Cheney, White Plains; Jacob H. Herzog, Albany; Catherine C. Martin, Niagara Falls; Percy L. Wight, Clinton. The secretary is E. G. Lantman, Albany.

Statistics showing the work of the Retirement Board for the year ending July 31, 1915 are given below. They show plainly enough that the system is proving of great value to teachers who have served faithfully in the schools of the State, and also that the schools themselves are receiving positive benefit. Members of the board, as they become familiar with individual cases of retirement because of disability, realize how great this relief and protection to the schools really is. During the year the city of Yonkers has, in the prescribed method, by vote of its public school teachers, given up its local plan for retirement and come under the state law.

The first and most important duty of the Retirement Board is to make absolutely certain the payment in full of every annuity granted. It is of much greater importance that a teacher once retired shall feel absolutely secure in the enjoyment of her annuity than it is to retire a larger number of teachers than the funds warrant. The board has proceeded in a conservative way, and is unanimous in its devotion to such method of procedure. It looks beyond the present and the next two or three years, and has constantly in view those later years in which the experience of some other systems show that the greatest strain on the funds may be expected. The board feels confident that every teacher who has been retired is absolutely secure.

The financial statement by the State Treasurer, who is by law the custodian of the fund, gives proof that the board in accumulating a surplus of income during these early years is preparing to meet the heavier load of a dozen years hence.

One of the clearest facts brought out by the board's experience was the necessity of expert, unbiased medical advice. Very fortunately for all concerned, the board was able during the year to make arrangements whereby it received assistance in this field from Dr. W. A. Howe, State Medical Inspector. Doctor Howe has been able on the occasion of his official trips in the State to make arrangements for interviewing and examining applicants for retirement. The assistance the board has received from him is invaluable and

has contributed in no small measure to the confidence which the board feels in the justice of its action in declining to place many applicants upon the retired list.

The following persons on the retired list died during the year ending July 31, 1915:

NAME	ADDRESS	DATE OF RETIREMENT
A. M. Baker.....	Brentwood .....	July 24, 1913
Mrs Josephine M. Bassett.....	Rockville Center....	Jan. 14, 1914
Charlotte Cary.....	Coeymans Hollow..	July 24, 1913
		(transferred from Poughkeepsie)
Perez Dimmick .....	Margaretville .....	April 26, 1913
Helen J. Hilliard.....	Martinsburg .....	July 24, 1913
Sylvester W. Holdredge.....	Newburgh .....	Oct. 25, 1913
Mrs Minnie M. Love.....	Morrisville .....	Oct. 24, 1914
Mrs Katherine D. Neish.....	Walton .....	Oct. 25, 1913
Emeline E. Niles.....	Cooperstown .....	April 26, 1913
Joanna M. Puff.....	Ithaca .....	July 24, 1913
Anna T. Rattigan.....	Auburn .....	Jan. 8, 1913
Ida M. Robb.....	Cranesville .....	Oct. 24, 1914
Harriet E. Stevens.....	Mount Vision .....	April 26, 1913
Harriet L. TenBroeck.....	Elmira .....	July 24, 1913
Minnie G. Wright.....	Utica .....	July 24, 1913

The following persons on the retired list resumed teaching during the year ending July 31, 1915:

NAME	ADDRESS	DATE OF RETIREMENT
George E. Powell.....	Petersburgh .....	Oct. 25, 1913
Emmeline W. Thomas.....	Geneva .....	Oct. 24, 1914
Charles W. Vandegrift.....	Bainbridge .....	July 31, 1914
George U. Weyant.....	Middletown .....	July 31, 1914



## Retired October 24, 1914

NAME	ADDRESS	YEARS OF SERVICE	ANNUITY	CAUSE OF RETIREMENT
Edgar A. Alford.....	Naples.....	29	\$168 80	Service and disability
Martha J. Andrews.....	Watertown.....	39	154 40	Service
Anna L. Babcock.....	Sag Harbor.....	32½	275 ..	Service and disability
Emma Beckwith.....	Stissing.....	34	158 60	Service (age 67)
Helen C. Bunce.....	Glen Cove.....	34	330 ..	Service (age 63)
Julia C. Caplise.....	Canandaigua.....	30½	200 48	Service and disability
Edgar D. Crouch.....	Fredonia.....	26	197 40	Service and disability
Arthur A. Disbrow.....	Prattsville.....	42	168 30	Service and disability
Florence Fatzinger.....	Penn Yan.....	24	175 10	Disability
Mrs Cassie G. Finch.....	Greenville.....	30	226 80	Service and disability
Eugene A. Fuller.....	Shelter Island.....	28	427 50	Service and disability
Mrs Ellen M. Gardiner.....	Mannsville.....	29½	181 80	Service and disability
Katherine M. Groat.....	Claverack.....	31	161 ..	Service (age 72)
Mary E. Harris.....	Fowlerville.....	25	158 40	Service and disability
Ella L. Heath.....	South Lima.....	25	207 30	Service and disability
Mrs Anna S. Hoyt.....	Port Ewen.....	32½	195 80	Service and disability
Kate Irwin.....	Ogdensburg.....	27	235 ..	Service and disability
Mrs Hester A. Jefferson.....	Parisville.....	16	91 14	Disability
Mrs Katherine M. Keller.....	Richfield Springs.....	32	244 ..	Service and disability
Arminda I. Kingsley.....	Gilboa.....	30½	188 20	Service (age 64)
Emma Kirby.....	Brainard.....	36	164 80	Service and disability
Ida C. Lansing.....	Homer.....	26	224 63	Disability
Glendora Leigh.....	Fairport.....	20	192 50	Disability
Mrs Minnie M. Love.....	Morrisville.....	22	237 07	Disability
Abbie Lyon.....	Willsboro.....	30	167 30	Service and disability
Cornelia B. MacDermott.....	Oswego.....	40	227 ..	Service and disability
Mrs Lelah S. Macdonald.....	Ancram.....	15	94 32	Disability
Mary I. McFarland.....	Keene.....	30	275 ..	Service and disability
Ransom A. Mathewson.....	Cherry Creek.....	32½	316 ..	Service and disability
Anna B. Parsons.....	Canastota.....	15	120 45	Disability
John A. Peters.....	Sharon Springs.....	31½	213 25	Service and disability
Frances A. Ritchie.....	Newburgh.....	43	275 ..	Service and disability
Ida M. Robb.....	Cranesville.....	19	228 ..	Disability
Mary A. Santry.....	Forest Hills.....	20	138 88	Disability
Albert H. Sherwood.....	Haverstraw.....	34	242 50	Service (age 69)
Emmeline W. Thomas.....	Geneva.....	41	422 50	Service
Mrs Arabelle G. Timmerman.....	Evans Mills.....	34½	159 60	Service and disability
Anna Van Sickle.....	Cayuga.....	28	405 ..	Service and disability
Mrs Anna A. Wallace.....	Avon.....	25½	240 ..	Service and disability
Elizabeth J. Whittaker.....	Grant.....	17½	106 40	Disability
Phoebe E. Whitten.....	Greene.....	25	192 15	Service and disability

## Retired January 13, 1915

Mary F. Bickford.....	Adams Basin.....	19	\$125 25	Disability
Mrs Elizabeth K. Bouck.....	Hyndsville.....	25½	284 ..	Service and disability
Jennie M. Connor.....	Salem.....	32	133 ..	Service and disability
Frank L. Cook.....	Amber.....	27	187 80	Service and disability
Minnie J. Flanagan.....	Buffalo.....	30	277 ..	Service and disability
Archibald S. Grant.....	Mumford.....	29½	198 40	Service and disability
Alvin S. Guffin.....	Schoharie.....	50	325 ..	Service
Matilda M. Henry.....	Arlington.....	26	215 62	Service and disability
Thomas R. Kneil.....	Saratoga Springs.....	32	600 ..	Service and disability
John P. Mabon.....	Delhi.....	15	360 ..	Disability
Sara J. MacMullin.....	Delhi.....	27½	167 20	Service and disability
Ida J. Shields.....	Belcher.....	28	148 ..	Service and disability
Mrs Alice C. Sweet.....	Chazy.....	26	164 ..	Service and disability
Mrs Minnie B. Weston.....	Ausable Forks.....	25	168 ..	Service and disability
Winifred Whitenack.....	Horseheads.....	28½	247 50	Service and disability
William T. Williams.....	Harvard.....	26½	169 40	Service and disability
Mrs Frances J. Wolsey.....	Canaseraga.....	29½	165 60	Service and disability

## Retired April 30, 1915

NAME	ADDRESS	YEARS OF SERVICE	ANNUITY	CAUSE OF RETIREMENT
N. Lester Beswick	Gansevoort	19	\$131 33	Disability
Mrs Susie C. Cline	Belmont	25½	166 40	Service and disability
Frances T. Day	Utica	28	332 50	Service and disability
Emma I. Dickerson	Hector	19	119 78	Disability
Anna E. Duffy	Evans Mills	31	330 ..	Service and disability
Anna Hall	Gray	32	224 48	Service and disability
Mrs Winifreda D. Hayes	Camden	27	160 80	Service and disability
Edna J. Hopson	Dolgeville	15½	162 75	Disability
Margaret Jackson	Oswego	41½	261 ..	Service and disability
Mrs Sophia B. Knapp	Conklin	27½	163 40	Service and disability
Jennie E. McKenty	Norwood	29	164 ..	Service and disability
Elizabeth B. Noosbickel	Binghamton	20	210 ..	Disability
Cora C. Russell	Corning	22½	155 52	Disability
Juliette Simmons	Kennedy	36	184 05	Service
Laura B. Wager	Canastota	26	203 20	Service and disability
Leah A. Watters	Lockport	17½	178 50	Disability
Walter R. Wickes	Indian Fields	32	207 50	Service and disability

## Retired July 30, 1915

Mrs Demis J. Adams	Rocky Point	27	207 60	Service and disability
Ida E. Betts	Ballston Spa	25	180 ..	Service and disability
Carrie H. Bliss	Wolcott	37½	250 ..	Service and disability
Drucilla Brice	Howells	41	308 23	Service and disability
Samuel R. Brown	Clifton Springs	27	600 ..	Disability
Julia A. Callahan	Saratoga Springs	41	395 ..	Service
Mary A. Carroll	Buffalo	25	300 ..	Service and disability
Allen E. Clapper	Gloversville	23	174 43	Disability
William H. Coats	Fulton	26½	435 ..	Service (age 64)
Catherine V. Creagh	Hornell	15	150 ..	Disability
Lucy L. Dean	Glens Falls	26	167 20	Service and disability
Addie Devenport	Afton	34½	173 20	Service and disability
Sarah E. Dickinson	Jamesstown	31½	427 50	Service and disability
John L. Dunbar	Worcester	16½	205 13	Disability
Mrs Sue C. Earsley	Staterville Springs	32	191 50	Service and disability
Alice A. Ellis	Orient	25½	245 ..	Service and disability
E. Theresa Fenton	Poultney, Vt.	49½	161 60	Service and disability
John H. Filer	Knowlesville	36	259 20	Service
Helen G. Finan	Port Jervis	27	292 50	Service and disability
Clifford Y. Flanders	Tribes Hill	19	247 ..	Disability
Henry L. Fowler	Binghamton	44	600 ..	Service and disability
Mary A. Galvin	Auburn	41	397 ..	Service and disability
Minnie Gildersleeve	Hurleyville	19½	184 08	Disability
Sara Godkins	Kingston	49	315 ..	Service
William B. Hancy	Hayts Corners	25	186 ..	Service and disability
Mrs Margaret T. K. Harney	Cadyville	27	189 40	Service and disability
John W. Harrington	Potsdam	25	465 ..	Service and disability
Emma Henderson	LeRoy	36	430 ..	Service
Ida K. Hornbeck	Port Jervis	30½	365 ..	Service and disability
E. Adell Hubbs	Elmira	31½	300 ..	Service and disability
Mrs Lizzie M. Hutchinson	Batavia	19½	179 05	Disability
Carrie Lathrop	Norwich	34	260 ..	Service and disability
Eva A. Layton	Methol	34½	264 ..	Service and disability
Almira E. McClarty	Hartford	31½	128 40	Disability
Edith A. MacCullen	Gerry	25	259 ..	Service and disability
Delia McNulty	Schaghticoke	34½	171 20	Service (age 59)
Alice S. Martin	Vernon	28	297 50	Service and disability
Jane H. Mattinson	Albion	33	235 50	Service and disability
Jane P. Miller	Stevensville	25	228 ..	Service and disability
Elizabeth Mills	Kingston	31½	310 ..	Service and disability
Mattie H. Nichols	Willsboro	25½	146 90	Service and disability
Adah M. Perry	Geneva	34	310 ..	Service and disability
Mrs Lovina Peterson	Glens Falls	22	126 02	Disability
George E. Powell	Petersburg	36½	128 ..	Service
Mrs Eleanor G. Quance	Lockport	34	247 50	Service and disability
Charles T. Ranford	North Bloomfield	34½	269 36	Service and disability
James F. Ryther	Lackawanna	49	450 ..	Service
Lillias E. Sanford	Marion	22½	220 50	Disability
Kate A. Scott	Shushan	33½	300 ..	Service and disability
Lizzie M. Shepard	Walton	25½	203 95	Service and disability
Mina A. Shepard	Walton	31	335 ..	Service and disability
Minnie Smith	Poughkeepsie	22½	200 84	Disability
Anna C. Spoor	Coxsackie	45½	252 50	Service

Retired July 30, 1915 (continued)

NAME	ADDRESS	YEARS OF SERVICE	ANNUITY	CAUSE OF RETIREMENT
S. Elizabeth Sprague.....	Rockland.....	35	290 ..	Service
Mary L. Sullivan.....	Auburn.....	26	295 ..	Service and disability
Emmeline W. Thomas.....	Geneva.....	42	425 ..	Service
Agnes Thompson.....	Amsterdam.....	31	267 50	Service and disability
Mrs Belle H. S. Tuthill.....	Washingtonville..	26	168 30	Service and disability
Mrs Prudence Van Buren.....	Laurens.....	21½	185 72	Disability
Adele Van Valkenburgh.....	Ghent.....	34	163 40	Service (age 60)
Ella Van Vranken.....	Schenectady.....	27½	352 50	Service and disability
Ida C. Wetzel.....	Utica.....	38	350 ..	Service
George U. Weyant.....	Middletown.....	45½	340 ..	Service
Elizabeth J. Williams.....	Utica.....	34	342 50	Service and disability
Mrs Frances B. Wormley.....	Elmira.....	32½	289 50	Service and disability

Yonkers, under section 1109b of the state teachers retirement law, transferred from its local retirement plan to the state plan April 30, 1915, adding thereby fourteen annuitants to the state retired list.

Total number of annuitants July 31, 1915.....	498
Total amount of annuities .....	\$136,378.47
Average annuity .....	\$273.85
Average age at retirement .....	58 years
Average length of service when retired.....	31 years

Summary

DURING YEAR ENDING	RETIRED			TRANSFERRED			TOTAL FOR YEAR		
	Men	Women	Total	Men	Women	Total	Men	Women	Total
July 31, 1913.....	27	125	152	3	36	39	30	161	191
July 31, 1914.....	41	130	171	0	15	15	41	145	186
July 31, 1915.....	28	112	140	0	14	14	28	126	154

DURING YEAR ENDING	RETURNED TO TEACHING			DECEASED			NET TOTAL FOR YEAR		
	Men	Women	Total	Men	Women	Total	Men	Women	Total
July 31, 1913.....	0	0	0	0	1	1	30	160	190
July 31, 1914.....	0	1	1	3	9	12	38	135	173
July 31, 1915.....	3	1	4	3	12	15	22	113	135



## Number of annuitants from each county of the State July 31, 1915

Albany .....	9	Onondaga .....	4
Allegany .....	4	Ontario .....	11
Broome .....	7	Orange .....	19
Cattaraugus .....	5	Orleans .....	7
Cayuga .....	10	Oswego .....	8
Chautauqua .....	8	Otsego .....	9
Chemung .....	20	Putnam .....	2
Chenango .....	8	Rensselaer .....	5
Clinton .....	4	Rockland .....	6
Columbia .....	10	St Lawrence .....	8
Cortland .....	1	Saratoga .....	15
Delaware .....	16	Schenectady .....	11
Dutchess .....	17	Schoharie .....	11
Erie .....	8	Schuyler .....	3
Essex .....	10	Seneca .....	9
Franklin .....	4	Steuben .....	12
Fulton .....	5	Suffolk .....	10
Genesee .....	4	Sullivan .....	5
Greene .....	10	Tioga .....	4
Herkimer .....	4	Tompkins .....	3
Jefferson .....	13	Ulster .....	17
Lewis .....	4	Warren .....	5
Livingston .....	10	Washington .....	13
Madison .....	8	Wayne .....	7
Monroe .....	6	Westchester (Yonkers).....	14
Montgomery .....	12	Wyoming .....	4
Nassau .....	11	Yates .....	3
Niagara .....	16		
Oneida .....	29		498

## Report of the state teachers retirement fund of receipts and disbursements for the fiscal year ending September 30, 1915

*Receipts*

Balance December 1, 1914.....	\$40 343 75
Amount transferred by places formerly having local retirement plans: bonds, mortgages etc.....	10 300 00
Amount transferred from common school fund.....	152 770 75
Amount sent monthly by Education Department.....	2 268 50
Amount forwarded by teachers for retirement.....	11 447 86
Interest on investments.....	3 941 83
Interest on bank deposits.....	2 472 77
Total.....	\$223 545 46

*Expenditures*

Annuities .....	\$80 188 00
Refunds .....	1 729 59
Invested .....	66 000 00

Accrued interest .....		561 11
Investments transferred by places formerly having local plans...		10 300 00
		<hr/>
Total .....		\$158 778 70
Total receipts .....	\$223 545 46	
Total expenditures .....	158 778 70	
		<hr/>
Balance .....		\$64 766 76

[Signed] JAMES L. WELLS  
Treasurer

The following investments were made by the State Teachers Retirement Board during year ending July 31, 1915:

	Due	Cost
Jan. 13, 1915 — 16 bonds, White Plains, union free school district number 1.....	1923-30	\$16 000
April 3, 1915 — 50 New York State registered bonds	Jan. 1962	50 000
		<hr/>
Total.....		\$66 000

## RURAL SCHOOLS

Section 1 of article 9 of the State Constitution provides as follows:

The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.

This mandate of the constitution must be interpreted to mean that so far as possible the system of common schools established throughout the State shall provide *equal* educational opportunities for all the children of the State. It does not mean that a state school system may be established which must of necessity by its very form of organization give to the children of one section of the State or of any community in the State educational facilities which are denied the children of another section or of another community. It must also be held that, under this provision of the constitution, a state school system must be established which imposes equal burdens upon the taxpayers who support such system. Inequality of taxation for school purposes is inequality of educational opportunity. A school system therefore whose administration imposes an inequality of taxation and which does not provide equal educational opportunities does not conform to the letter or the spirit of the constitution and should be modified.

It is proposed to visualize in this report the school facilities of two supervisory districts in Washington county and thus present

the educational advantages afforded by each of the schools in such supervisory districts. We have chosen Washington county because it is an average agricultural county in the State and the schools of that county are representative of the average schools throughout the State. Then too, the superintendents of these districts have supplied good photographs which may be used for the purpose. These two districts represent one-half of the schools of that prosperous county. A picture of each schoolhouse and of each school ground is given. The figures underneath each picture show the number of pupils enrolled, the average attendance, the grade of the teacher employed, the amount of state aid received, the amount raised by tax upon the property of the district, the rate of taxation and the cost per capita for the maintenance of the school. By looking at each one of these schools and taking into consideration at the same time the above assets of each of such schools, we may form an accurate idea of the type of school maintained in each one of these districts, the kind of curriculum which is pursued by the children, the equipment of the school, the efficiency of the teacher, the social and recreational facilities provided and the general uplifting influence which such school has upon the community.

The following pictures include views of all the school buildings of the several school districts in the second supervisory school district of Washington county, except the public school in the village of Granville, which is known as school district 7 of the town of Granville. There are maintained in this school a kindergarten, an eight-grade elementary school and a high school, maintaining a four-year approved course of study. The school building in this district, the courses of study maintained in the school and the activities of all phases of school work are illustrated by the accompanying pictures.

The pictures also represent the school buildings of the several school districts in the fourth supervisory school district of Washington county, except those districts which maintain high school courses. These pictures further indicate the number of pupils in each district, the equipment of the schools and therefore the type of work which may be done in each of such schools.

There are also pictures of the school buildings of the union free school districts in the fourth supervisory district of Washington county, in which approved four-year high school courses are maintained. These pictures illustrate the comprehensive



courses of study which may be maintained in such schools and also show the social and recreational features of school life which are possible where large numbers of pupils are brought together. The contrast between the work which may be maintained in the weak district schools and that which may be provided in the strong, central village or community schools clearly shows that the children in attendance upon this latter type of school have a decided advantage and are receiving a much broader and complete training than the children in attendance upon the district schools.



Dr Asa Fitch, who in 1844-45, was the first town superintendent of schools in the town of Salem, Washington county. In 1854 Doctor Fitch was employed as State Entomologist. He was elected a member of the entomological societies of France and of Russia, and of other scientific societies at home and abroad. He was awarded a gold medal by the Imperial and Central Agricultural Society of France in appreciation of the valuable services he rendered to science.

Second Supervisory District, Washington County



District 1, Granville



District 2, Granville



District 3, Granville



District 4, Granville





District 5, Granville



District 6, Granville



District 9, Granville



District 10, Granville



District 11, Granville



District 12, Granville





District 13, Granville



District 14, Granville



District 15, Granville



District 16, Granville



District 17, Granville



District 18, Granville





District 19, Granville



District 1, Hartford



District 2, Hartford



District 3, Hartford



District 4, Hartford



District 5, Hartford





District 6, Hartford



Children of District 6, Hartford, preparing for Hallowe'en



District 7, Hartford



District 9, Hartford



District 10, Hartford



District 11, Hartford





District 1, Hebron



District 2, Hebron



District 3, Hebron



District 5, Hebron



District 6, Hebron



District 7, Hebron





District 11, Hebron



District 13, Hebron



District 14, Hebron



District 15, Hebron



District 16, Hebron



District 2, Kingsbury





Playground games



District 3, Kingsbury



District 4, Kingsbury



District 5, Kingsbury



District 6, Kingsbury





District 7, Kingsbury



District 8, Kingsbury



District 9, Kingsbury



District 10, Kingsbury



District 11, Kingsbury



District 12, Kingsbury





District 13, Kingsbury



District 14, Kingsbury



District 15, Kingsbury



District 16, Kingsbury



Granville High School





Granville elementary school



Granville annex school



Sewing class, Granville public school



Domestic science class, Granville public school

Fourth Supervisory District, Washington County



District 2, Cambridge



District 4, Cambridge





Interior, district 4, Cambridge



District 5, Cambridge



District 6, Cambridge



District 7, Cambridge



District 8, Cambridge



District 9, Cambridge





District 10, Cambridge



District 11, Cambridge



District 13, Cambridge



District 14, Cambridge



District 1, Jackson



District 2, Jackson





District 3, Jackson



District 4, Jackson



District 5, Jackson



District 6, Jackson



District 8, Jackson



District 9, Jackson





District 1, Salem



District 2, Salem



District 5, Salem



District 6, Salem



District 7, Salem



District 8, Salem





District 9, Salem



District 10, Salem (Blind Buck School), at centennial celebration



District II, Salem



Library, district II, Salem



District 13, Salem



Interior, district 13, Salem





District 14, Salem



District 16, Salem



District 15, Salem



Interior, district 15, Salem



District 1, White Creek



District 2, White Creek





District 3, White Creek



District 6, White Creek



District 4, White Creek



Interior, district 4, White Creek



District 5, White Creek



Interior, district 5, White Creek





District 7, White Creek



District 8, White Creek



District 9, White Creek

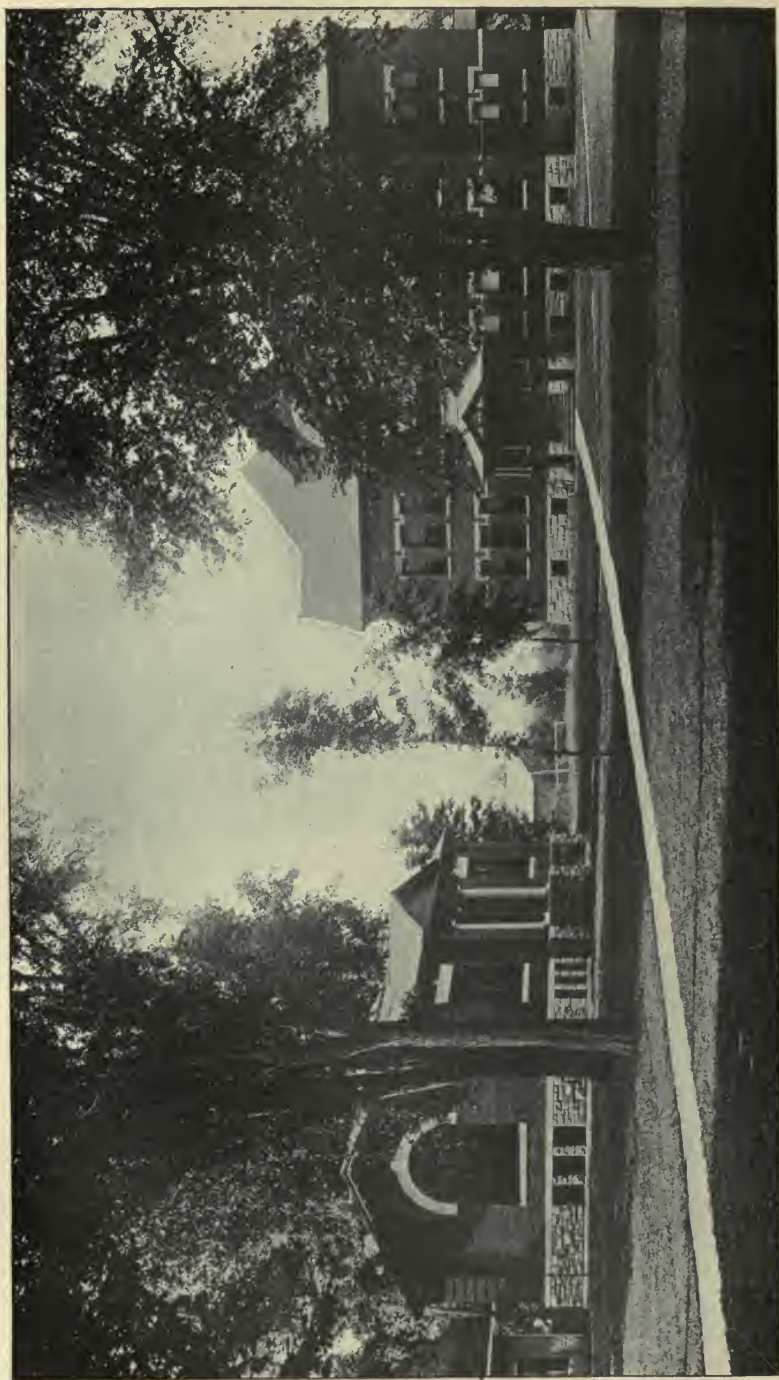


District 11, White Creek



District 13, White Creek





Public school and public library, Cambridge (district 10, White Creek)



First grade



Second grade

Cambridge public school



Third grade



Fourth grade

Cambridge public school





Fifth grade



Dismissal of fourth and fifth grades

Cambridge public school



Sixth grade



Seventh grade

Cambridge public school



Eighth grade



Second year high school drawing lesson

Cambridge public school





High school girls' gymnasium exercises



High school boys' gymnasium exercises  
Cambridge public school



Biology group



Physics laboratory  
Cambridge public school



Academic study room



Bookkeeping class  
Cambridge public school





On the athletic field during recess



Agriculture class scoring poultry. Three buildings of the type shown in the picture were constructed by the class.

Cambridge public school



The 1916 football team



Game between the first and second teams  
Cambridge public school



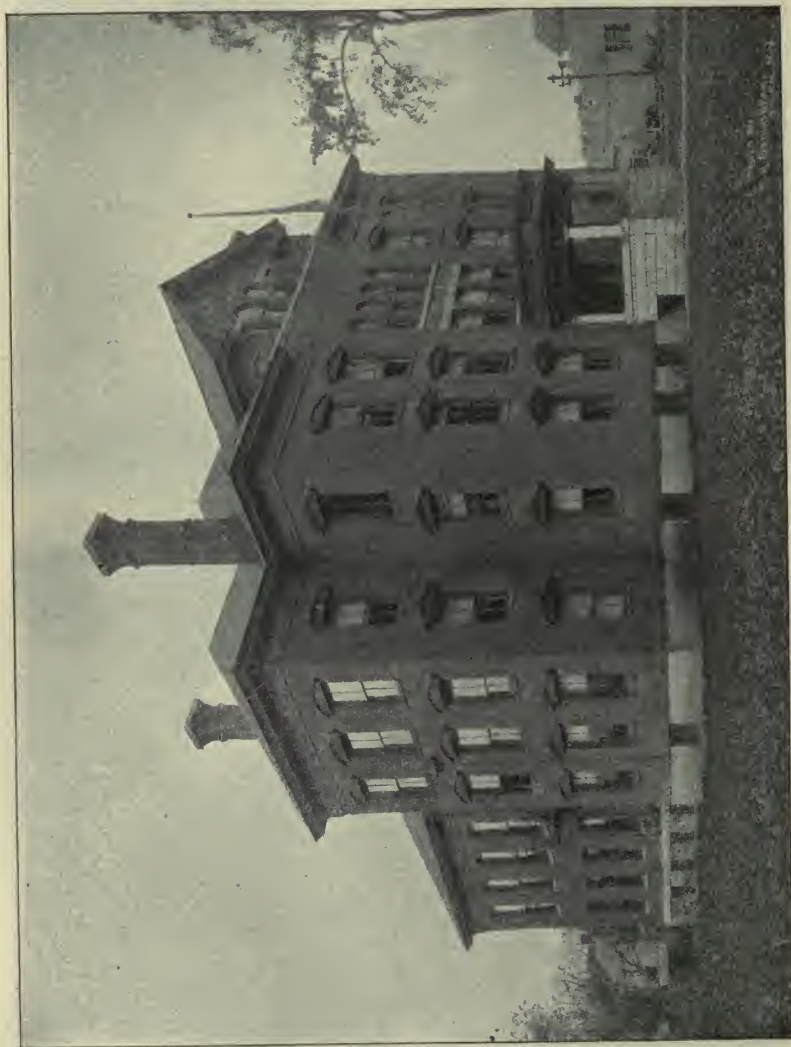
Girls' basketball team



Track team

Cambridge public school





Washington Academy (union free school district 2), Salem



First and second grades



Third and fourth grades  
Washington Academy, Salem



Fifth and sixth grades



Seventh and eighth grades  
Washington Academy, Salem





Academic study hall



First year Latin class

Washington Academy, Salem



Physical exercises by pupils of fifth and sixth grades



Nonresident pupils responding to roll call  
Washington Academy, Salem



Physical exercises by academic pupils



Pupils at work in Bancroft library  
Washington Academy, Salem





Football game between Washington Academy and Greenwich High School



Football game between Cambridge High School and Washington Academy  
at Salem

## INDIAN SCHOOLS

The registration of Indian children in school during the year was as follows: in reservation day schools, 807; in residential Indian schools, 275; in white schools, 114; total 1196.

The average number of days of school was 183; the average number of days' attendance was 118. The highest average, 138 days, was recorded in the St Regis schools. The record is not so bad as it appears because the enrolment includes some children who, for good reasons, were off the reservations during a part of the year. It is not so good as it ought to be because of the indifference of many parents and the inadequacy of the machinery for enforcing the laws. The failure of the State to provide effective government for the Indians is a great obstacle to educational progress on the reservations. Innocent children are suffering for this neglect and the welfare of the communities is jeopardized.

The Indian problem of New York is essentially educational, and the schools are the centers from which instruction, inspiration and direction may most effectively emanate. The schools should be social as well as educational centers. It is therefore desirable that the teachers of each reservation should be grouped together in some central home and have facilities for exerting a social influence in the community. A central school is also needed on each reservation to give advanced instruction and provide industrial training. These two ideas might be realized by the establishment of day or residence schools on the larger reservations, combining homes and schools. From these centers the teachers of the elementary schools could go each day and the older pupils be collected from the various districts into the central schools. The pupils might be transported each day or kept at the central schools during the week. By such an arrangement the pupils could be better fitted for home life and the community as a whole would be greatly benefited. In these days of good roads and automobiles, it is possible to bring communities like the reservations very close together and thus promote social progress. Moreover, in order that teachers may do the best possible work and be inclined to remain at it, it is essential that the material conditions under which they labor be made comfortable and attractive, and the means of carrying on the work be made as effective as possible.

At present the education of New York Indian children is carried on by a number of unrelated agencies. There is a system of day schools maintained by the State through the Education Department.



Onondaga reservation Indian school



Indian children in the Onondaga reservation school





School 1, Tonawanda Indian reservation



School 5, Cattaraugus Indian reservation

There are three residential schools: the Thomas Indian School maintained by the State but independent of the Department, the Quaker School supported by the Friends, and the Convent School in charge of Sisters. These three schools provide education for about three hundred children. Besides these, the government school at Carlisle and the Hampton Institute in Virginia receive pupils from the New York reservations. An increasing number of reservation children are going to white schools near the reservations.

With all these facilities the Indian children of New York are not without the means of securing at least a common school education. If they fail to do so, it is largely their own fault or that of their parents. The chief difficulty in the way of the best results is that the available schools are not properly articulated and consequently provisions for some phases of a properly rounded training are not adequate. There are no schools to which pupils may be sent after they have accomplished what can be well done in the district schools. Industrial schools should be available for pupils who have reached a certain age and advancement. In some cases, perhaps, arrangements might be made with neighboring white schools. The Thomas and Quaker schools might provide this supplemental instruction for the Cattaraugus and Allegany reservations, but neither of these is connected with the Department schools, and besides they receive children from all the reservations and can not meet the demands of the reservations on which they are located. Carlisle is too far away to be available to many children and, on the whole, it seems best for Indian children to get their education on or near the reservations.

School accommodations on the St Regis reservation are over-taxed and at least two of the districts should have two-department schools. Such schools would not only relieve the congestion in attendance but would make a better grading possible and provide for industrial training.

The course of instruction in the Indian schools is a modification of that followed in the public schools. In the choice of material it aims to eliminate the unessential and put the emphasis on what is likely to be of most practical value to these particular children. Speaking and writing the English language are made prominent. Reading is regarded the fundamental means of obtaining knowledge and oral and written language are emphasized as means of expressing the knowledge gained. Observation is utilized in obtaining information. Social manners and home duties receive attention

and physical health and good morals are not neglected. The aim is to fit the children as far as possible for their future living by precept and example. An effort is made to reach the homes through the schools.

Success in school efforts on the reservations varies with conditions and teaching ability. Some of the teaching is excellent; some is mediocre; some is poor. It takes a year or more for a teacher to learn how to work successfully with the children. Those teachers who remain for a term of years, other things being equal, do the best work. Many become deeply interested in the children and acquire great skill in teaching them.

It is worthy of notice that the education provided for the Indians has thus far failed to develop leadership of the right kind. Possibly it may be said also that it has not developed good followers. Lack of initiative is apparent among educated Indians. There are many young men and women on the reservations of New York who have had the advantages of extensive schooling, graduates of Carlisle, Hampton etc. They ought to be leaven to leaven the whole lump. The expected results have not followed and the kind of education received is no doubt in part responsible for the failure.

There is a tremendous social undertow to overcome on the reservations. The work of the schools is partly nullified by the social atmosphere transmitted from generation to generation. The lack of effective government, of social standards, of moral restraints, of a progressive spirit, are serious obstacles to the working out of the ideas imparted and emphasized in the schools. The school work itself is hampered by indifference and opposition in the homes.

In view of the facts, education that is limited to ordinary school instruction is incomplete and defective. The efforts of the schools should be extended and supplemented. The state government must have a part in the education of its wards, by providing proper laws, courts and policemen for the enforcement of order and morality. Provision must be made for the instruction of adults in vocations, social duties, economic activities, etc. - There should be libraries and social centers on the reservations. The young people should be organized into forces for the social uplift of the communities.

The schools are doing something in these directions. One teacher writes, "We are continuing our home helpers' club during the summer vacation; results are seen in and around homes." Government seeds were obtained on one reservation and distributed generally among the adults as well as the children. The children raised



vegetables at home and marketed them, one little girl realizing \$4. At the end of the season the children brought in some of their products and made an exhibit that attracted much attention and was a valuable object lesson. Flower beds have been planted about the schoolhouse in one instance and upon the corner where reservation roads cross. The result of efforts like this has been imitation by many and increased interest among all the people. One of the principal teachers was instrumental in securing a farmers' institute on the reservation.

It is good educational policy to have Indian children in school with white children whenever it is possible to do so. One hundred fourteen Indian children are reported as having been in schools for white children during the year. White children are under instruction in a number of Indian schools. This mingling of Indian and white children is not harmful to either race, and is of great benefit to Indian pupils in learning the language and customs of the people with whom they must live in business and social relations.

The need of larger appropriations for the Indian schools of New York is too apparent for argument. Increase in cost of maintenance and in salaries of teachers has not been properly considered by the Legislatures of recent years, and the demands of progress have been almost wholly neglected. An extravagant use of money for these schools is not desirable but a reasonable increase in appropriations from year to year is necessary and proper.



Tuscarora Indian school girls

## SCHOOLS FOR THE DEAF

The following statistics are of interest in considering the schools for the deaf:

KIND OF SCHOOL	SCHOOLS IN UNITED STATES	PUPILS IN UNITED STATES	SCHOOLS IN NEW YORK	PUPILS IN NEW YORK
Residential.....	64	10 837	10	1 857
Day.....	70	1 773	3	286
Private.....	20	.....	2	.....
Total.....	154	12 610	15	2 143

From this table it appears that 17 per cent of the deaf pupils in the United States are in New York schools. By reason of its relatively large number of schools for the deaf, New York has an advantage over other states in working out an educational system and consequently has a greater responsibility. It should maintain a high standard in the classification of its schools and in the character of the instruction provided. To obtain the best educational results it seems necessary to have schools in which speech reading and speech are used exclusively, those in which finger spelling is employed in the classes, and those in which signs are allowed as a means of communication. The feeble-minded deaf should be trained in separate schools. Efforts to instruct all classes of deaf children in the same institution have not been in the highest degree successful. The change to a system of schools suited to the various mental and physical conditions of the deaf would cost no more and would make the instruction much more effective.

Eighty-seven per cent of the deaf school children of New York are in institutions of a more or less private character. The policy of the State has been to pay these institutions a per capita sum for the education and care of deaf children. In recent years several institutions have received increased appropriations from the State.

The division of deaf pupils into two classes, county and state, still obtains and is an obstacle to the best educational results. It would cost no more and be much better if all pupils were state pupils.

Twelve states now have compulsory school attendance for the deaf. The advisability of making existing laws, or a modified form of them, applicable to the deaf deserves consideration.

A conference of principals and teachers of the deaf was held in the Education Building in Albany, May 6th and 7th, and an exhibit



Class in cooking



Class in carpentry and cabinetmaking

Association for the Improved Instruction of Deaf Mutes, New York





Class in dressmaking



Class in tailoring

Association for the Improved Instruction of Deaf Mutes, New York



Class in drawing



Kindergarten occupation

Association for the Improved Instruction of Deaf Mutes, New York

of photographs showing the material equipment of the schools and of charts indicating the scope and character of the work was a feature of the general school exhibit prepared for the University Convocation in October. These events have served to emphasize the fact that schools for the deaf are a part of the state school system and to bring the various institutions into closer relations of mutual understanding and cooperation. A committee of principals was named to plan for a permanent organization of teachers and another was appointed to outline a course of manual and vocational training for general adoption in the schools.

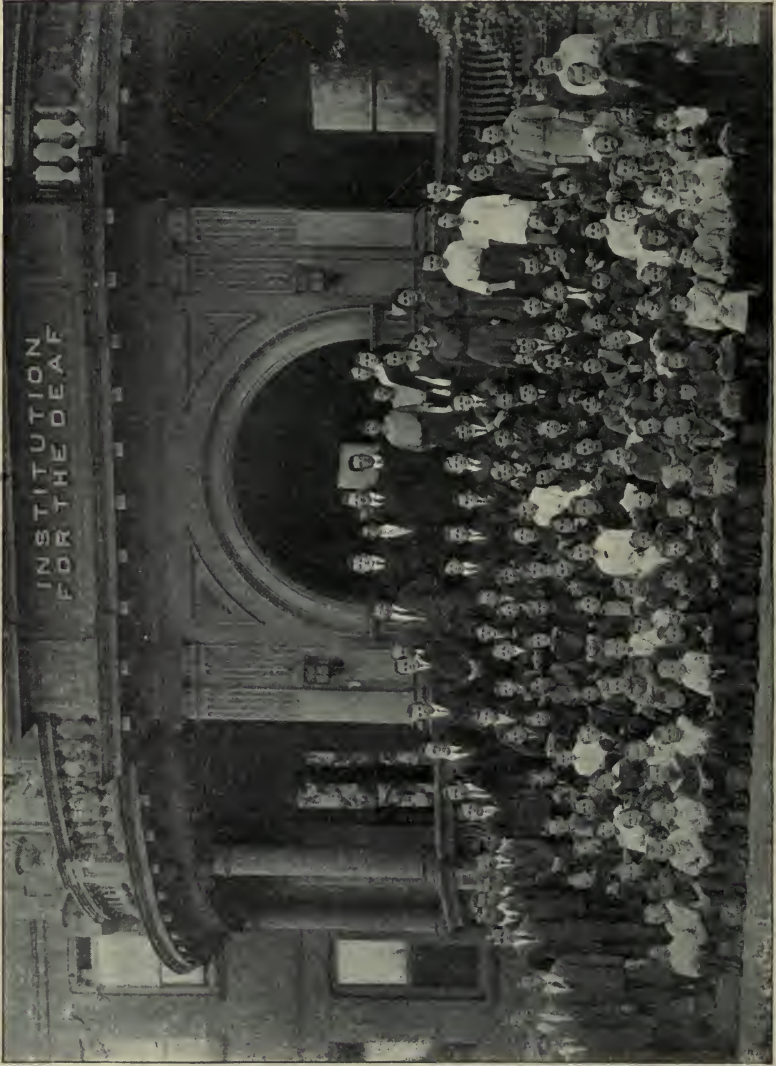
It is a pleasure to note fresh activity among the teachers of the deaf in working out improved methods of instruction. It seems to be generally felt that the goal has not yet been reached in teaching speech reading and speech. New experiments are being tried which seem to be promising. Greater interest in the subject is manifest among teachers, pupils and parents. Most of the day schools for the deaf make speech teaching prominent, with excellent results. The institutions have been slower to break away from the traditional methods of the past.

The process of eliminating relatively less valuable material of instruction has not yet gone far enough in schools for the deaf. There is too keen a desire to follow in the footsteps of teachers of the hearing in choosing subject matter, regardless of the limitations that confront the deaf in seeking knowledge and developing power of thought and expression. Technical grammar, higher mathematics and other languages than the English seem out of place in the curriculum of studies for the deaf in view of the tremendous effort required to get information and express it in the common speech of society. The deaf may by diligent application acquire an education perhaps equivalent in value to that sought and sometimes attained by the hearing, but they are not fitted to secure the same training nor would they be profited by it.

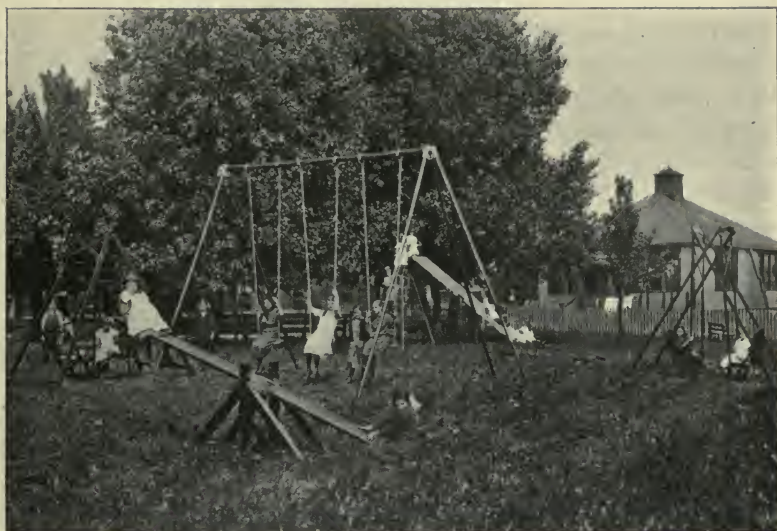
Pupils in schools for the deaf for one reason and another drop out of school at an age when they are best prepared to profit by instruction and guidance and need it most. It is highly desirable that the deaf should remain in school until they reach full maturity of body and mind. This is especially true of those that are without parents or friends to help them to get a firm foothold in the business and social world.

The question of preparing teachers for the schools for the deaf is an important one. The ordinary preparation of a teacher for a hearing school is perhaps sufficient, with some supplemental special





School for the Deaf, Buffalo



On the playground



The Montessori system  
School for the Deaf, Buffalo

study of the peculiar mental condition of the deaf, for giving instruction in all branches but speech reading and speech. These require great knowledge and skill and because of their importance should be taught by expert teachers trained for the work. It is at this point that schools for the deaf are most lacking. Speech reading and speech are not on the whole as well taught as other subjects and the results are apparent. There are in fact no schools or classes in New York where teachers can learn the difficult art of teaching speech to the deaf. Each school trains its own teachers as best it can and thorough preparation for the work is very rare.

It has been suggested that some normal school take up the work. There are serious objections to this plan. The number of candidates for such a class would be small and the requirements upon the normal school would be large, inasmuch as it would need to maintain a teaching force and a practice class. Moreover most of those who are teaching the subject will continue to teach for some years and can not have the benefits of the proposed instruction.

Another plan worthy of consideration has been suggested, namely, that the State Education Department employ the most expert teacher of speech reading that can be found and send her about among the institutions of the State. She could spend a month in each school during the year, giving instruction to the teachers and conducting classes for their observation. This plan would have an immediate effect on the schools in stimulating and directing effort in this important branch.

An important result of the conference of principals and teachers of schools for the deaf was the adoption of a standard of minimum attainment for pupils in a twelve-year course. While it is difficult to measure with accuracy the attainments of deaf pupils, it is nevertheless possible and necessary to establish a minimum of results that should be insisted upon. During the year 1914-15, 124 pupils left the New York institutions for the deaf. Of this number, 28 were classed as graduates, 33 were dropped because their time had expired and 63 withdrew for economic and other reasons. The small number of children completing courses in the very liberal allowance of time granted and paid for by the State indicates a defect somewhere that should be remedied.

The elementary course outlined by the Department is the nominal standard of graduation in 50 per cent of the schools for the deaf, but it does not appear that this requirement is very strictly adhered to; in the other schools varying local standards are maintained,



none of them very definite or strictly enforced. The new standard aims to be an equivalent of the elementary course but not an exact copy of it. It is a uniform, minimum requirement adapted to the ability and needs of the deaf.

Schools for the deaf were among the first to recognize the value and need of hand training and trade instruction. This line of work, however, is not very systematically and effectively carried on in many of the schools. There is no general agreement as to what may be profitably undertaken and valuable time is being frittered away in efforts to do something without any well-digested plan of procedure. The committee having the matter in charge is expected to formulate a minimum course in hand training, leading up to trade instruction, that may be generally adopted in the schools.



Class in sign painting.



Class in painting  
School for the Deaf, Buffalo



Class in dressmaking



Class in tailoring

School for the Deaf, Buffalo



## SCHOOLS FOR THE BLIND

New York has one state institution for the education of blind children, located in Batavia; it also pays a per capita sum for the instruction and care of pupils in the New York Institution for the Blind and for a few blind babies in two branches of the National Sunshine Society. The New York City public schools also make provision for the education of the blind.

The number of blind children does not increase, probably because more effort is put forth to prevent blindness at birth. Efforts to get blind children into school have increased during the past few years and it is the fault of parents if any blind children are growing up in ignorance.

The Batavia school has about all the pupils it can accommodate; the New York institution has had only about one-half as many as it might receive. Moreover 20 per cent of the pupils of the New York institution come from New Jersey.

The New York institution owns valuable property in the city but much of it is unproductive at present. In time it will have a large endowment though at present its activities are restricted. The Batavia school is maintained by state appropriations. It is not under the control of the State Education Department. The enrolment for the year has been: Batavia, 175; New York, 110.

The instruction of the blind presents few peculiar difficulties. The mind of the blind child works like the mind of a seeing child and its power of concentration is even greater. The blind child gains greater capacity for carrying on long and complex mental processes than does a seeing child. His loss of one sense makes the others more acute and reliable.

The subject matter best adapted to the blind naturally differs somewhat from that available for the seeing. Perhaps teachers of the blind have not given this fact as much consideration as they should have done. Nothing should be taken for granted or inferred from the curriculums of schools for the seeing. What experience has shown to be best for the blind should be selected and the mistakes of the past corrected as they appear.

Music seems to be well established as a valuable acquirement for the blind. It adds joy to their lives and affords a remunerative employment. Both institutions make vocal and instrumental music specialties and give courses in piano tuning and repairing.

The New York institution is developing along the industrial line, seeking to accomplish more in preparing pupils to gain a livelihood. Recent labor laws making employers liable for accidents to employees further restrict the already narrow field of labor for the blind and deaf. If possible, new employments should be found for these classes and the schools should prepare their pupils for them.

## PRISON SCHOOLS

Total number enrolled in the schools since organized.....	17 914
Total number of men and women in prison during 1914-15.....	9 166
Number enrolled in the schools.....	3 187
Percentage in schools.....	35
Number of foreign born in school 1914-15.....	1 922
Native born, foreign parents.....	470
Native born, native parents.....	795
Number of Italians in school.....	1 079
Number of Americans in school.....	1 265
Number in school under 20 years of age.....	223
Number in school between 20 and 30.....	1 753
Number in school between 30 and 40.....	823
Number in school over 40.....	383
Number illiterate on entering school.....	903
Number unable to speak English.....	791

The prison schools have now been in operation for ten years and may be judged, in part at least, by what they have accomplished. The best evidence regarding their work is the testimony of the men and women who have been under their influence. Voluntary expressions like the following have been numerous: "Until the day I first went to school, I feared it would not be long before I would be taken to an insane asylum. Now, at the end of my two years' term, I can read fairly well and understand what I read. I can read and write my own letters, which is positively a blessing to me." "I owe my health and the condition of my mind to my books. My hours in school have been among the pleasantest spent in the building. I have always looked forward to my school to make every day a greater success." "I have learned to spell and read considerably. I appreciate the great work our professor has undertaken in this institution." A recent issue of the *Star of Hope*, published by the inmates of Sing Sing, is devoted entirely to the schools and gives interesting information regarding them.

Within the past few years there has been a remarkable change in public sentiment regarding the treatment of men in prison. The pendulum has swung from an attitude of extreme harshness toward convicts to one of unusual, if not extreme, leniency. Ten years ago the advisability of having any school in a prison for adults was questioned; now it is urged that every prisoner should be in school.

The schools were started on the theory that every man should have an opportunity to reform and to prepare for the inevitable struggle to regain a place in society. They have sought to provide a prison atmosphere favorable to reform, leaving the responsibility for



reformation with the men themselves, where it properly belongs. They began their work in the belief that a good knowledge of the English language is the foundation on which to build and stimulating and helpful books the means to be employed to promote the ends in view.

The original school idea has prevailed up to the present. A steady intellectual and moral pressure has been quietly exerted upon the men. They have not been coaxed or forced into right ways but the path has been pointed out and the advantages of pursuing it made as clear as possible. The power and will to resist evil impulses have been encouraged and a desire to make up for lost time and opportunity has been fostered. The schools have favored strict and just discipline, firmness tempered with kindness and sympathy. They stand for a proper adjustment of study, work and recreation. It is the school idea, permeating every department of prison management, that must accomplish all that can be done by human agency to promote the reformation of the criminal. Spectacular emphasis on some one or more expressions of viciousness in a man will not result in any thing permanent. The man inside the body must be reached and a new life breathed in by his own effort from a Divine source. He must fight his own battle and win his own victory. The school seeks to furnish him with some of the weapons for the warfare.

In view of what schools in prisons have done and are doing it seems strange that they have received so little public recognition and support. In discussions of prison conditions and their betterment the schools are seldom mentioned and comparatively few people know of their existence. Public ignorance and misinformation regarding the work of the schools is an obstacle to their fullest success. While they are doing what they can with the opportunities they have, they are not doing what they might and ought to do. They should be developed along right lines. Here is where the responsibility of the public and of prison officials comes in, since no advance can be made without their sanction and help. They must provide the material equipment for the work and stand back of those who understand the problem and know how to work it out.

There are two subjects of vital interest to the future of the prison schools upon which there is a difference of opinion. At present, school sessions are held during the day; some favor a change to evening sessions. Those who know most about the matter from the educational standpoint believe that such a change would greatly

lessen, if not wholly destroy, the effectiveness of the schools. The argument for the change is that day sessions interrupt the industries, the answer to which is that the interruption is not serious and, if it were, the benefit to the men would more than offset the loss of time to the industries. The other important matter upon which opinions differ is in regard to the use of foreign languages in the prisons. This is serious because the use of books in foreign languages is advocated by eminent authority. The supreme effort of the schools is directed toward doing all that can be done while the men are in prison to fit them for life in this country, in other words to Americanize them. A knowledge of the English language is fundamental to the end in view. Teaching a foreign language in prison or permitting it to be read or written there does much to neutralize the work of the school in this direction. It has been demonstrated that the English language can be taught to adults in prison if no other language is permitted and if a knowledge of it is made a requisite to consideration for parole. The immediate pleasure or convenience of the prisoner ought not to outweigh the duty of the State to prepare the men to go back to society better fitted to meet its conditions. These two menaces, one economic, the other sentimental, ought to be averted by an enlightened public sentiment.

Conferences of the head teachers, representatives of the Department, prison officials and others interested in prison education are held three times a year in the various prisons. This year, two such conferences were held in Albany, in the Education Building. Superintendent Riley and Commissioner Finley manifested their interest in the work by being present at one of the sessions. The conferences are useful as means of comparing experiences, formulating policies and unifying the methods and matter of instruction.

An exhibit in commemoration of the tenth year from the establishment of the schools was prepared for the University Convocation. It aimed to show the purpose, the scope, the means employed and the results of the school work.

## SPECIAL SCHOOLS

Under this head may be included those schools that care for children (*a*) neglected, (*b*) mentally defective, (*c*) delinquent.

Such children may be found in homes, in the streets and in institutions. Wherever they are they are a menace to society since from their number comes a large percentage of the immoral, the vicious and the criminal. The tendency is to gather them into institutions as the best available means of protecting society, and this is taxing the financial ability and the philanthropic spirit of the people to its limit.

These children are the danger point in public education, a fact that is not fully realized. They are too much overlooked in the scheme of instruction at public cost. Thousands of boys and girls are growing up in institutions with no education except what is provided by charity. Many others are getting a kind of education in neglected homes and in the streets that is fast fitting them for reformatories and prisons. There were 9019 juvenile delinquents in the courts of New York City in 1913. The average age of these boys at their first act of delinquency was a trifle over 14. A large percentage of delinquency is no doubt preventable through the right kind of education.

It is primarily the duty of the parent to educate and train his children into good citizens. If the parent fails, however, to do his duty in the matter, the State must, in self-defense, undertake the work and a failure to do so is a costly mistake.

Institutions were established originally as places of detention or physical care and the educational feature was either wholly ignored or made a secondary matter. This notion has been greatly modified but not entirely destroyed. Under the spur of public sentiment, the educational side of the work of child-caring institutions has been improved but it is still far from receiving the attention its importance demands.

This failure to educate properly the various classes of children who are likely to be dangerous and costly to the State is not entirely the fault of the institutions that receive them. Institutions for neglected children receive barely enough funds in many cases to pay for food, clothing and care, leaving little or nothing for instruction. Neglected children in the homes and streets are in an



even worse condition, educationally, for, even though they attend public schools with more or less regularity, their home and street education largely neutralizes its benefits.

All neglected, mentally defective and delinquent children should be carefully looked after from the educational standpoint by the public. If this duty is intelligently, sympathetically and effectively performed many of the evils that burden society will be prevented.

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